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DEBATES

IN THE

LEGISLATURE OF PENNSYLVANIA,

ON THE

Case of Gideon Olmstead.

REPORTED BY WILLIAM AND HUGH HAMILTON.

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DEBATE ON GIDEON OLMSTEAD'S CASE.

HOUSE OF REPRESENTATIVES.

MONDAY, JANUARY 15, 1810.

MR. DUANE. Mr. Speaker, it is my duty, as the chairman of the grand committee, to whom was referred that part of the governor's message, relating to Olmstead's case, to present this report to the house. But, sir, I may be allowed, least any doubt should any where be entertained of my sentiments on the subject, to express my regret, as I now do, that I should be obliged to be instrumental in introducing a paper, that, by its mere existence, is calculated to reduce this commonwealth to a condition of greater humiliation and disgrace, even than that to which it has heretofore been reduced.

"The committee to whom was referred that part of the governor's message which relates to the case of Gideon Olmstead and others, *vs.* the executrices of David Rittenhouse (late state treasurer) together with the documents connected with it,

"REPORT: That they have considered the subject with all that attention which its delicacy and importance imposed. To the comprehensive and lucid report of the committee of the last house, exhibiting a history of the case from its origin, to the time when the peremptory mandamus issued out of the supreme court of the United States, nothing need be added to give the present house a clear view of the subject; nor will it be necessary to add any thing to the history of the case, given by the governor from the adjournment of the legislature to the present time. The committee therefore, will repeat no more of that information already given, than appears to them necessary to connect the facts, and the reasoning upon which they found the resolutions, they propose to submit to the consideration of the house.

"While the formation of the present constitution of the U. States was in contemplation, there was no point about which the people of these states, were more jealous and anxiously solicitous, than that of preserving the sovereignty and independence of the several states, that, lest while an efficient government was formed, power might be delegated or assumed by it, that would issue in a consolidation, destructive at once of the state rights and sovereignties, and to the liberties and happiness

of the people. Notwithstanding the constitution of the United States guaranteed to every state in the union a republican form of government, yet encroachments on the state rights and sovereignty was apprehended from the judiciary established by that constitution; the judges possessing a power and independence too remote from controul and responsibility. To guard against this danger, we find that, as early as the year 1787, the following amendment was proposed and adopted, "that no fact tried by a jury, should be otherwise re-examined in any court of the United States, than according to the rules of common law." In the year 1798, a further amendment obtained, "that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state," and the subject now before us, conclusively demonstrates that the fears of the people were well founded, and, that notwithstanding the amendments alluded to, the judiciary, by sophistry and subtlety, can assail the rights, sovereignty and independence.

"Having made these preliminary observations, the committee proceed to state, that the continental congress on the 25th of November, 1775, passed a resolution to the following effect, viz. "that it be, and hereby is recommended, to the several legislatures in the United colonies, as soon as possible to erect courts of justice, or give jurisdiction to courts, now in being, for the purpose of determining concerning the captures to be made as aforesaid," (alluding to the resolutions which preceded) "and to provide that all trials in such courts be had by a jury, under such qualifications as to the respective legislatures shall seem expedient." Hence the natural inference, that congress at that period did not conceive that they had the power, either delegated or incidental to establish such admiralty courts; the very nature of a recommendation implies, that the party recommending *cannot*, but the party to whom the recommendation is given, *can do* the thing recommended. Congress by their anxious solicitude, that the states should establish such courts, evinced a strong sense of their own want of power, and their conviction of the power of the respective states. The legislature of Pennsylvania, on the 9th of September, 1778, in compliance with the recommendation of congress, established an admiralty court, before which all cases of capture were to be tried by a *jury*, "and the finding of *the jury* should establish the facts *without re-examination or appeal*," admitting of appeals only on points of law, *appearing upon the face of the record*. It may here be remarked, that some of the states established an admiralty court, without admitting of *any appeal* in *any case*.

"The articles of confederation were framed by congress, July 9th, 1778, which was previous to the decision of the state admiralty court in the case of Olmstead, they however were not finally adopted till March 1, 1781.

"By these articles it is declared, "that each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation *expressly delegated* to the United States in congress assembled. In the same articles of confederation, it was *expressly provided*, "that no member of congress should be competent to sit as a judge of appeals," and at no period from the commencement of the dispute between Olmstead and the state to the present time, has the legislature abandoned her rights, or failed to protest against the right of the federal government to interfere.

"From the moment the court adjudged the portion of the prize to the commonwealth, the state became a party, and the act of the executive council of April 21, 1789, directing the then state treasurer to take up the money for the use of the state, and the act of April 2d, 1803, directing the executrices of David Rittenhouse, to pay over the money into the state treasury, solemnly affirmed the interest and the right of the state. But, waving all objections (although insurmountable in our opinion) to congress exercising jurisdiction or controul over facts established by a jury. The amendment to the constitution of the United States, which declares that, "the judicial power of the United States, shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of a foreign state," completely embraced the case of Olmstead, and of consequence the taking cognizance of the case, by the chief justice of the United States, was an assumption of power in direct hostility to the aforesaid amendment of the constitution. We refer to 2d Dallas, page 480, and 3d Dallas, page 1, in the case of Chrisholm Exr. *versus* Georgia. In this case the supreme court of the United States, February term, 1794, rendered judgment for the plaintiff, and a writ was actually awarded, yet in the case of Hollingsworth, et. al. *versus* Virginia, Dallas 3d, page 382, the former cause, with the latter, together with every other suit entered against a state, was at once swept from the record, and the court declared *unanimously*, that the amendment before recited, being constitutionally adopted, there could not be exercised any jurisdiction in any case *past* or *future*, in which a state was sued by citizens of another state, or by citizens or subjects of any foreign state.

"To evade the difficulty however, it was alledged by judge Marshall, "that the amendment of the constitution, simply pro-

vided that no suit should be commenced or prosecuted against the state; that in this case the suit was not instituted against the state or its state treasurer, but against the *executrices of David Rittenhouse*—that if the proceeds had actually been the property of the state of Pennsylvania, however *wrongfully acquired*, the disclosure of *that fact* would have presented a case on which it would be unnecessary to give an opinion." If the courts of the United States can evade the constitution by distinctions so subtle, as almost to elude the most acute preception, and justify themselves by arguments so obviously fallacious, then scarcely can a case be conceived in which the constitution may not be violated, and the rights of the state be invaded by the decision of a judge.

"And, if the executive is bound to carry into effect, such decision, however unconstitutional, then indeed would the judiciary cease to be a co-ordinate branch of the government, and become paramount not only to the legislative and executive departments, but even to the constitution itself.

"From this view of the subject, the committee are of opinion, that the constitution of the United States, has been violated by the decision of the judge, and the constitutional rights of the state invaded. The question then occurs, in what manner is a state to defend her rights against such invasion? It has already been observed, that the constitution of the United States guarantees to each state a republican form of government—that the powers not delegated to the United States, are reserved to the states respectively, without entering into a detail of the rights reserved or not delegated, suffice it to say, that "the right of acquiring, possessing and protecting property is one." If this be not of the powers delegated, then indeed a state is in a worse and more degraded situation then the most obscure individual, whose property cannot be taken from him when fairly acquired, without his consent, even for public use, without a compensation. In the case before us, all the constituted authorities of the state, have uniformly asserted their rights, and protested against every attempt to infringe them.

"It may be asked, who is to decide the question? If it be alledged the state has not the right, it may justly be replied, the power invading it, has not. It is a case unprovided for in the constitution, and there is no common umpire.

"We proceed to enquire into the measures of the executive, in protecting the rights of the state, in the case of Gideon Olmstead.

"The legislature by an act of April 2, 1803, passed almost unanimously, peremptorily directed the executive to protect the persons and properties of the executrices of David Rittenhouse, from any process whatever, issued out of any federal

court. The legislature could not have intended, that the protection to be afforded was by paying the money as soon as process should issue, or they would have so expressed it; and the executive, however he might have been disposed, had not the power to draw the money out of the treasury, without the direction of the legislature; neither had he the power to direct any civil officer "to protect the executrices against the process of the federal court." Consequently, the military was the only means by which they could be protected. If judge Tilghman would on *his* oath release Mrs. Sergeant; if he believed her to be in custody on an unconstitutional decision (agreeably to his solemn declaration) shall not the legislative and executive authorities, on *their* oaths, resist the usurpations of the federal courts, when they are satisfied they *are* such?

"On Saturday, the 25th of February, 1809, the governor received, by the evening's mail, from John Sergeant, intelligence from Mr. Ingersol, informing him a peremptory mandamus would issue on Monday following; the governor communicated to the legislature the information he had received, and also, that he had made arrangements to protect by military force the executrices from any process being served on them. On the 24th of March, 1809, general Bright (appointed by the governor for that purpose) being informed that process had issued out of the federal court for the arrest of the ladies, called out a portion of the militia to defend them; thus, nearly one month was afforded to the legislature, *to deliberate and to direct what proceedings should be had on the subject.*

"The result of their deliberations appear at large on their journals, where it will be found, that eleven senators and fifteen members of the house of representatives, ONLY, voted in favor of authorising the governor to pay the money, while nineteen of the former and sixty-eight of the latter voted against it.

"From a candid and impartial view of the conduct of the executive—from the documents that are before the committee, they are of opinion, the governor is not only *exempt from all censure, but merits the approbation of every friend to the just rights of the state*, for his promptness in making his communication to the legislature, and perseverance in defending the constitutional rights by all means in his power, as far as sound and prudent discretion would justify. On the whole, considering that silence on the part of the immediate representatives of the people might be taken as a tacit acquiescence *in*, and submission *to* a *judicial usurpation*, and thereby invite to other and simalar acts—the committee submit the following resolutions:

"*Resolved*, That after most solemnly declaring their readiness, cheerfully to submit to all the legal and constitutional decisions

of the federal courts, the house of representatives cannot but express their highest approbation of the legal and constitutional conduct of the same in the case of Gideon Olmstead.

"*Resolved*, That the sovereignty and independence of the states, as guaranteed by the constitution of the United States, ought to be most zealously guarded, and every attempt to depreciate the value of those rights, and to consolidate them in the general government, is hostile to the liberty and happiness of the people, and merits our decided disapprobation.

"*Resolved*, That the efforts of the governor to sustain the rights and sovereignty of the state, and the promptitude and fidelity with which he executed his legal and constitutional powers under the act of April 2d, 1803, merits our highest approbation.

"*Resolved*, That we approve of the conduct of the president of the United States, in releasing general Michael Bright and the men who had been under his command, from the unjust and unconstitutional sentence of the federal court.

"*Resolved*, That we highly approve of the conduct of our predecessors, in requesting the members of both houses of congress to use their best endeavors to have the constitution of the United States so amended, and an impartial tribunal be appointed to determine disputes between the general and state governments.

"*Resolved*, That the governor be requested to transmit a copy of these resolutions, together with the foregoing statement, to each of the senators and representatives in congress from this state."

TUESDAY, JAN. 30, 1810.

The house resolved itself into a committee of the whole, Mr. Piper in the chair, on the report of the committee in the case of Gideon Olmstead, and others.

Mr. Tarr. Mr. Speaker—I rise with considerable emotion, when about to express my opinion on a subject of so much importance as the present. I have never been the advocate of executive influence—I have never been the advocate of executive power—I have never had a wish to be considered one of the executive party; if there is such a party; nor have I ever been the advocate of judicial usurpation of the federal or any other judiciary. I hold no appointment, and have never asked for any—I am not calculating upon receiving an appointment in the United States army; nor have I contracted to supply them with any kind of necessaries, either clothes or shoes. And if I show more than usual zeal on this occasion, I hope it will not be at-

tributed to any personal motives—but to the importance of the subject.

I once thought I would never again say any thing on this subject in the legislature of Pennsylvania. But since it has been charged that the opinion of the legislature of Pennsylvania is hostile to the union—by rumours circulated, many have been led to believe, that we are hostile to the United States, and have actually levied war against the union. I would not have rose if it was not to disavow this charge: that no hostility was ever offered to the union, or to the constituted authorities, where the exercise of power was confined within constitutional limits; and to declare that the resistance called for by the law of 1803, was in defence of state rights, where the judges had assumed authority, and enforced their decree: that their conduct was calculated to swallow up the state sovereignty, so fatal to republican government, and against which every republican had and would lift his hands. And moreover to justify this state in the measures it took when there was no other tribunal to which Pennsylvania could appeal for the justice of her cause.

I do not expect to throw any more light on this subject—it has been fully explained, not only before the legislature; but before judge Ross in the admiralty court; before the court of appeals; and also when Michael Bright was brought up before the federal court, where throughout his trial there was a full investigation of this subject. My intention is merely to show that a regular, and uniform opposition has been given to the decision of the judges of the supreme court; and when this subject has been brought before the legislature, they have determined to resist, and determined to oppose this decision unauthorized by law, or by the constitution. And also to show that the resistance called for by the law of 1803, was that made by the governor; and if he had not paid attention to it he ought to be impeached.

I shall commence by showing the justice and propriety of this state attempting to obtain an amendment to the constitution of the United States, to provide for the settlement of future similar cases. In order to do this I shall touch on the principal transactions in this case as they occurred. On the 25th of November 1775, congress passed the following resolution: "*Resolved*, That it be and hereby is recommended to the several legislatures in the United States, as soon as possible to erect courts of justice, or give jurisdiction to the courts now in being for the purpose of determining concerning the captures to be made as aforesaid, and to provide that all trials in such case be had by a jury under such qualifications, as to the respective legislatures shall seem expedient."

It will be recollected, at this period there were no powers in the courts of admiralty established by congress; no powers were delegated to congress; they possessed no powers but what were delegated, and what were not delegated were retained. Pennsylvania therefore could establish courts, without the recommendation, or the consent of congress: but Pennsylvania did adopt the plan recommended by congress.

In March 1778, the articles of confederation were proposed; but they were not adopted till 1781. In the 9th article, congress has the power of "appointing courts for the trial of felonies and piracies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided no member of congress be appointed a judge of any of those courts." But be it remembered that this article was not adopted by Pennsylvania till 1781: and admitting that by this 9th article congress had the power to establish such courts of appeals, it was provided that no member of congress should be a judge of such court.

It appears that on the 9th of September, 1778, the legislature, or the general assembly of Pennsylvania, as it was then called, passed an act, which established a court of admiralty, and provided, that all trials in it should be by jury, and the facts found by the jury should be without re-examination or appeal; but that in cases of captures there should be an appeal to the continental congress. By this, then, and this only, it was the duty of the inferior, to grant an appeal to the superior court—the facts there not to be questioned; the legality of the finding of the jury to be left entirely out of the examination. It appears that this court, being thus established in Pennsylvania, in 1778, Gideon Olmstead and three others were prisoners on board the British sloop Active, bound to New York—that on the 6th of September, 1778, a contest arose between the captain and the crew.

Gideon Olmstead and three others fastened the captain and the remainder of the crew in the cabin. The captain found means to fasten the rudder, and prevent those on deck from navigating the vessel. On the 7th a compromise took place—the captain agreed to unfasten the rudder, that those on deck might steer the vessel into Egg Harbor; where they should take the long boat, and leave the vessel. On the 8th they were boarded by the Convention, commanded by capt. Houston, and in a short time afterwards the Girard sloop of war came up, and with the Convention steered the sloop Active into the port of Philadelphia; where they filed a libel in the admiralty court for the whole of the vessel and cargo. In November the case was brought before the court of admiralty, of which George Ross was judge, and a jury were sworn and gave their verdict, founded on the following facts:

"And now the said jurors having heard all the exhibits above set forth, and the arguments of the respective advocates thereon, and taken time to consider thereof, upon their oaths and affirmations aforesaid, respectively do say that they find as follows, viz. One fourth part of the neat proceeds of the sloop Active and her cargo to the first claimants. Three fourth parts of the neat proceeds of the said sloop and her cargo to the libellant and the second claimants, as per agreement between them.

"Whereupon his honor the judge proceeded to the publication of his definitive decree or sentence of condemnation in this cause, which, being read and filed, is in the words following, viz.

THOMAS HOUSTON, Esq. *qui tam*, *v.* SLOOP ACTIVE, &c.	*In the court of admiralty of Pennsylvania.*

"The jurors impannelled, sworn and affirmed in this cause, having, upon the evidence produced to them, found one-fourth of the neat proceeds of the sloop Active and her cargo to the first claimants (to wit, Gideon Olmstead and others) and three-fourth parts of the said sloop and her cargo to the libellant, (to wit, Thomas Houston, Esq.) and the second claimant, (to wit, James Josiah:) I do thereupon adjudge and decree that the said sloop or vessel, called the Active, her tackle, apparel, furniture, and all and singular the goods, wares and merchandizes, laden and found on board her at the time of her capture, be condemned as lawful prize; and I do order that the marshal of this court do sell the same at public vendue, and, after deducting the costs and charges of the trial, condemnation and sale thereof, out of the monies arising from the said sale, that he pay one full fourth part of the residue thereof unto Gideon Olmstead, Artimas White, Aquila Rumsdale, and David Clark, claimants in this cause, to and for their sole and absolute use; and that he pay the remaining three full fourth parts of the said residue unto Thomas Houston, Esq. the libellant, and James Josiah, the other claimant in this cause, to and for the use of themselves, the officers, mariners, seamen, and all others belonging to, or concerned in, the armed vessels the Convention and the Le Gerard: And I do further order and decree, that the said marshal pay the whole of the said costs and charges unto the treasurer of the state, according to the resolutions of the honorable congress, and the act of assembly of this state in such case, and for such purposes made and provided.

"GEO. ROSS."

"*November* 5, 1778."

Let it be rememdered that this trial was by a jury, who had an opportunity of seeing and hearing the witnesses; and a full opportunity of judging of the credibility of the witnesses; and at a time when military valor was as like to be rewarded as at any period since the revolution: but Gideon Olmstead appealed to congress.

On the 15th of December, 1789, congress appointed out of their own body five members to be a court of appeal, who directed that the money should be paid to Gideon Olmstead, to stand charged to Pennsylvania on the statement of her accounts. The legislature and people of Pennsylvania then declared, that congress had gone beyond their powers. And I ask by what authority the court of appeals was constituted to reverse the verdict of the jury? Congress had no powers but those expressly delegated to them; and they did assume the powers of the court of admiralty, and prevent from execution the verdict of a jury; and when by the 9th article of the confederation, no judge should be appointed out of congress to that court. And in either of these cases, they assumed a right not delegated by the constitution,

George Ross refused obedience to the decree of the committee of appeals, and paid the money awarded into the state treasury, taking indemnity from the state treasurer. In January 1780, he was informed of the proceedings in the court of appeal; he protested against their decision, and informed the messenger that he protested against it; and told the messenger to inform congress that he protested against it; and on the bench declared that the state would not pay the money out of the state treasury. Here again the assembly took their stand; the assembly of Pennsylvania, upwards of 30 years ago, resisted the unconstitutional proceedings of the court of appeal. A suit was afterwards brought against George Ross, the judge at the time of the decree; a suit was brought against the judge for the money, and judgment by default; but let it be remembered, as I before observed, that there was no notice to the state, and if there was, how could they bring it against a judge who protested against the decision of the court of appeals; and did protest at the time the case was decided.

In April, 1792, a suit was brought by the executors of George Ross against David Rittenhouse then state treasurer, on the bond of indemnity which Rittenhouse gave Ross. Thomas M'Kean then chief justice, after giving a narrative of the whole transaction, says, "For these reasons, and others, which I shall omit for the sake of brevity, I am sorry to be obliged to say, that, in my judgment, the decree of the committee of appeals was contrary to the provisions of the act of *congress*, and of the

general assembly, extra-judicial, erroneous and void;" and gave a verdict for the defendant. Here was the opinion of as able a judge as any in the United States, declaring the decision of the court of appeals extra-judicial, erroneous and void.

In January, 1803, Thomas M'Kean, being governor, informed the legislature of the decree of judge Peters in Olmstead's case; and says, "Having had a knowlege of the cause, and all the circumstances attending it, twenty-four years ago, I cannot in duty to the commonwealth silently acquiesce in some of the former, and late proceedings therein. By the ingenuity exercised in this business, "An act of congress," "An act of the general assembly of the state," and "A verdict of a jury," are held for naught; by a strained construction the treasurer of the state is converted into a stake-holder, and a sentence given in favor of the libellants without any summons, notice to, or hearing of the commonwealth of Pennsylvania, the only real party, whose interest may be thereby effected to the amount of near fifteen thousand dollars;" and intimates that resistance ought to be made, with respect to these proceedings. On the 2d of April following, an act was passed by the legislature, the preamble to which declares, "That the jurisdiction entertained by the court or committee of appeals over the decree of George Ross, as judge of the court of admiralty of Pennsylvania, in the suit where the claimants of the brig Active, as prize, were the libellants, as herein before stated, was illegally usurped and exercised in contradiction to the just rights of Pennsylvania, and the proper jurisdiction of the court of admiralty established as aforesaid, under the authority of this state, and that the reversal of the decree of the said George Ross, in that suit was null and void; that the jurisdiction entertained by Richard Peters, judge of the district court aforesaid, in the suit of Gideon Olmstead, Artimus White, Aquila Ramsdale, and David Clarke, against Elizabeth Sergeant and Esther Waters, surviving executrixes of David Rittenhouse, deceased, was illegally usurped and exercised." This was the language of the legislature of 1803. I believe they were warranted in this declaration by the constitution of the United States, which declares, "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party," &c. But, in order to give a coloring to their violation of the constitution, they sued the state treasurer in his private capacity, after the decision in the court of admiralty, and the money being paid into the state treasury.

Here the absurdity is apparent. The money was awarded by the court of admiralty, and paid into the state treasury; and a suit was brought against the state treasurer in his private capacity. What is to prevent them from bringing a suit for all money paid into the state treasury, against the state treasurer in his private capacity, according to this construction of the constitution? In every case they could do this, and the provisions of the constitution would be rendered nugatory and useless.

And again, the constitution declares that, "In all suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than by the rules of common law." I now ask whether these facts, or the trial in the supreme court reversing that in the court of admiralty, did not go to reverse the facts found by the jury; and whether the judges of the supreme court are at this day to reverse facts found by the verdict of a jury, executed as officers of that department.

The second section of the act of 1803, requires the governor "to protect the persons and properties of the said Elizabeth Sergeant and Esther Waters from any process whatever, issued out of any federal court, in consequence of their obedience to the requisition so as aforesaid directed to be made to them, by the attorney-general of this commonwealth." *By force of arms* must be the construction of this section; there was no other in the power of the governor, or intended by the legislature; force of arms was the only means in the power of the governor.

The passage of this law was warmly advocated, and warmly recommended by a certain newspaper published in Philadelphia; declaring that if the court was permitted to go on in this way it would produce a consolidation so fatal to republics; they had not under the constitution that power. That paper has since stated it was not understood by the makers of the law, that the governor should have the power to resist by force. That paper then ranked high among republicans; but I must say that that paper has either changed its politics, or the editor his principles. I hope it will have no influence on the members of this house.

On the 29th of February, 1809, the governor informed the legislature that a peremptory mandamus was about to issue out of the federal court against the executrices of David Rittenhouse, and that in the execution of a painful duty he was taking measures to call out the militia. But some have contended that the governor ought to have paid the money.

The constitution declares that no money shall be paid out of the treasury, but by a previous appropriation by law; none was

appropriated, and the governor could not have paid the money, if he had had a disposition. Some have said that if the governor did not pay the money, he acted under an unconstitutional law. I ask if the governor ought to be a judge of the law? I ask if he is called upon to execute a law, is he to be a judge of the constitutionality of the law? Vain and nugatory would be the acts of the legislature, if the officer called upon to execute a law, should declare the same unconstitutional, and their provisions be thereby defeated. What if this went thro' all the constitutional forms and provisions? Then if the officer declares the law unconstitutional, a sheriff or constable might do the same, and the object of the law thus be defeated. Others say he ought to have refused to act, seeing the law was unconstitutional; that he ought rather to have delayed a little. But the constitution declares that the governor shall see the laws faithfully executed; and if he had refused, would that be a faithful execution of the law? I say would it not have been an abandonment of his duty? Others have said that he ought to have suspended the execution of the law until the legislature would put it into his power, by making an appropriation, to pay the money. The constitution declares that no law shall be suspended but by the legislature, and the governor has no right, nor any other department, to suspend a law, except the legislature. For having suspended the operation of the law in the case of the secretary to the Spanish minister, who had been convicted of forgery, formed one article of impeachment against Thomas M'Kean in 1806, and I think very justly.

Some have censured the governor for not calling out a sufficient force. It was his direction to the general to call out a sufficient force. And who would have thought that a number would be found so base, so degraded, so regardless of state rights and state sovereignty, so lost to the honor of Pennsylvania, as to resist even a sergeant's guard, as it is called. If they had been residing in any other part of the state, I believe they, or a smaller number, would have been sufficient. I say, if the governor had not proceeded in the line of conduct that he has done, he ought to be impeached, and I, by my vote, would have sanctioned it.

On the 3d of April, near six weeks after the governor had called out the militia, the legislature adopted resolutions expressed in much stronger terms than those on your table; expressing in the most strongest terms their determination to resist, near six weeks after the militia were called out; and yet we are told all the responsibility should attach to an individual.

I must be permitted to take some notice of the trial of Michael Bright and others. They were not declared guilty by the jury, in manner and form as they stood indicted; but by the

construction of the judge, and not of the jury. The verdict, or report, was in the following words: "The defendants acted under the law and authority of the state, whether upon the whole matters, the law is in favor of the United States, or of the defendants, the jurors refer to the consideration of the court, and if the court are of opinion that the law is for the defendants, then they are not guilty." But the verdict was modified by the court, and it pronounced them guilty—they assumed a power delegated to the jury—they assumed and exercised a power exclusively belonging to the jury, and the jury cannot delegate it to the court, or to any other person; nor can the court, conscientiously or religiously, exercise it according to the constitutional provision "that the jury shall be judges of the law and the facts;" but the court assumed and exercised this power, and pronounced them guilty by construction. By this construction the state of Pennsylvania has sustained great loss, and the United States a great deal of disappointment. By this construction the actual settlers north west of the river Ohio have been driven from the country, in which they had settled under an express law of the state, and contrary to the express decision of the supreme court of Pennsylvania, and the land given to the warrant holders. By this construction the noted traitor Burr, has been permitted to escape a just punishment due to his crime.

I must, once more, be permitted to call the attention of this house to a former circumstance, of a gentleman who had a seat in the house in 1806–7. A letter was read by Dr. Leib from Aaron Burr to a gentleman in Rhode Island (or from a friend of his) stating that several members of congress, and all the judges of the U. S. courts were with him; and yet, sir, we are to be told that the advocates of state rights, are the confederates of Burr. I hope, Mr. Chairman, the house will attempt another application to the general government, so that some impartial tribunal, to prevent the clashing jurisdictions of the federal and state courts, may be appointed. The president has pledged himself to lay the case of Gideon Olmstead before congress. Who is there but must recollect the letter of Thomas Jefferson, after the acquittal of Aaron Burr, in these words, or words to this effect;—that congress would enquire whether the fault was in the law, or the administration of the law. I hope the resolution under consideration will be adopted, and that no personal consideration will produce an abandonment of the position, which Pennsylvania has taken and persisted in for upwards of thirty years.

Duane Mr. Duane. Mr. Chairman. I have never had so much cause, as I have at present, to lament my not having been accustomed to engage in public discussion. I should have been

proud to have risen with a conciousness of ability to interest the attention of this committee, and to aid in inducing it to reject the disgraceful resolutions on your table. If I have not that ability, my excuse is, that, until honored with a seat in this assembly, I never had an opportunity to express my sentiments in a public and deliberative body.

Sir, it must be known to every member of this committee, that the occurrences which took place last spring, created alarm in the minds of many of the people of this state, and anxiety amongst them all, as to the effects that would follow. The present session of the legislature was anticipated, by the community, with various emotions and wishes; some looked for the impeachment of the governor, others for a vote approbatory of his conduct, but as far as I was able to determine, the mass of the people were of opinion that silence would be more creditable to the state, than any enquiry whatever.

Before I had the slightest intimation or idea, that I should be nominated as a candidate, I partook of the anxiety common to my fellow-citizens, and believed that any attempt to review the subject would tend to create heat and animosity, without accomplishing one useful purpose. Nor did I abandon this opinion when nominated and elected, for I believe that the governor erred from want of judgment, and that, although surrounded by miserable and deceitful advisers, he was an honest man.

But, sir, I had scarcely taken my seat in this house, when I saw a pamphlet, issued from the executive printing-office, eagerly distributed amongst the members—a pamphlet, not confined to a mere collection of documents, but containing an *ex parte* statement of Olmstead's case; and this, I concluded, was the commencement of a plan to mislead the members of the legislature—subsequent circumstances verified my anticipations.

When the governor's message was received, I attended particularly to that part of it touching the case of Olmstead, and I was happy in the opinion which I then formed from it, that the governor did not call for any scrutiny as to the fact, and merely invited a prospective consideration. After narrating the occurrences which took place last spring, the governor said, "The history of this case, involving the rights and property of the state, is fully and faithfully recorded in the journals of the general assembly; it is therefore not thought necessary, in the present communication, to lay before the representatives of the people, more than that portion of information which completes the history to its final issue."

"I cannot, fellow-citizens, close this subject, without endeavoring to impress your minds deeply and seriously with its importance, and the dreadful consequences which may flow from

the judges of the United States courts exercising powers, which set at naught the acts of the legislature, the decisions of our judges, and the solemn verdicts of our juries. If an amendment, providing effectually against this evil, be not made to the constitution of the United States, it is greatly to be feared that the collision of jurisdiction will be productive of the most alarming consequences; already has it been the cause of much oppression to our citizens in the western parts of Pennsylvania, and very much impeded the settlement and improvement of the country."

I conceived that there was nothing in this, calling upon the legislature to express their opinions as to the past, and that the utmost intended was, that another attempt should be made to amend the constitution. I did not believe that this paragraph was to be the foundation upon which the governor's friends were to construct a monument to his fame, for I did not suspect him of that hypocrisy which characterises some of his officers and advisers. But, as soon as the grand committee met, I began to alter my opinions; then and there I saw the relatives of executive officers busily engaged in inculcating the propriety of a vote of thanks for the magnanimous conduct of the commander in chief; and at last one of those gentlemen introduced something like the resolutions now before us. In that committee, sir, I advocated silence, as more honorable to the state, and as most prudent for the governor; but I found that it had been determined (to use a phrase often employed in this house) to cram the resolutions down at all risks, and, after failing to get two days delay after the report of the sub-committee was introduced, I contented myself with uttering the monosyllable—No. Such was the origin of the resolutions under consideration.

Before I proceed to the general subject, I cannot but notice some observations, that were made by the gentleman from Fayette (Mr. Tarr.) After a number of insinuations, in the opening of his speech, which no one could mistake, and which no one can more heartily despise than I do, the gentleman introduced the newspaper, called the Aurora. He made some remarks on the part which that paper took in the case of Olmstead, and read two or three extracts to prove that it advocated the military resistance made by the governor to the constituted authorities of the union. Without seeing the papers, which he held in his hand, I hesitate not to say, that the gentleman quoted that paper falsely, and I challenge him to the proof.

Why he introduced that paper, I cannot say, unless it was that he might gratify himself in casting the vindictive thunderbolt, that forever rests upon his brow, ready to be hurled at all who dare to disagree with him; a disposition, which in charity

I attribute to the irritability of his nerves, rather than to a malignity of heart. On such conduct as this, sir, I will make but one general remark: There is no chain or charm strong enough to restrain folly, and if monkeys are doomed to eternal punishment, the gentleman may be put in the Champanzee department, for the amusement of the upper demons.

Mr. Brown (of Greene.) The gentleman is certainly out of order; if the chairman does not call the gentleman to order, I will through the chairman.

Mr. Tarr. If the gentleman had not a part in that paper, he need not have denied it. I did not say he had, but he thinks I did apply it to him, like the federal court, by construction. If he felt nothing on this point, why his violence and enthusiasm? Why not show moderation?

Mr. Duane. I had not a wish, Mr. Chairman, to say any thing disorderly, and I believe I should be the last person in this house to use indecorous language; but, when an unprovoked and unfounded attack was made upon my parent, an attack unconnected with the great questions before this committee, and which, no one could mistake, as intended for me; when this was allowed, I considered myself not only at freedom, but bound to show the gentleman the indecency of sporting with the feelings of others. I should be glad, sir, if gentlemen would practice the moderation they pretend to value; they may depend upon it, however, that I will suffer no indignity without resenting it.

I shall now proceed, sir, to the subject under consideration. The first resolution, to which I shall confine my present remarks, is in these words:

"*Resolved*, That after most solemnly declaring their readiness cheerfully to submit to all the legal and constitutional decisions of the federal courts, the house of representatives cannot but express their highest approbation of the legal and constitutional conduct of the same in the case of Gideon Olmstead."

The questions, "what was the conduct of the United States courts? Was that conduct illegal and unconstitutional?" involve a review of the whole subject, and as a history of the revolution furnishes abundant materials for deciding the first point with correctness, I shall timely notice the prominent facts, pertinent to the subject before us.

Is it necessary to acquaint the members of this committee, with the objects of the colonists in 1775? Does not every man know, and proudly declare, that the real object of the patriots of 1775, was national independence? The hardships and exactions, long experienced by the colonists, had been preparing

them for resistance, and if they did not make it until after blood had been shed, their forbearance is a proof of a cool, calculating policy, which ultimately secured, what earlier rashness might have lost.

Sir, in 1775, the people of America, determined to resist one of the greatest powers on earth; the act was not to be done by one, two, or three colonies, their energies would have been unequal to the glorious enterprize; the whole, the united force of the whole people, was absolutely necessary to create any hopes of independence. With such views, the necessity of a national executive government, for the united colonies, became self-evident, and the people by their colonial delegates erected the national congress of 1775–6.

As soon as congress was organized, they began to exercise sovereign powers, to raise armies, fleets, &c. powers which no colony had heretofore considered itself legally authorised to exercise; the supreme power was in their hands, with all the attributes and consequences necessary for the protection of the state and the repulsion of the enemy.

Among other attributes, was the right to make and conclude peace, and necessarily the right to decide upon captures made in the seas. To show that this power was exercised, I will state a number of instances, and I invite gentlemen on the other side to show where or when the people protested against or refused to execute the wishes of congress.

As early as the 2d of May, 1776, congress directed the militia to be trained for defence. This was done, in the style of recommendation and not of laws as now enacted; yet if any one had at that day questioned the authority of congress, or refused to execute, because all the forms of law were not observed, I ask this committee if he would not have been denounced as a traitor?

On the 14th of June, an army was ordered to be organized, and for what? to maintain the rights of the people of America, must be the reply of every one.

On the 26th of November resolutions relating to maritime captures were adopted—and for what purpose? to carry into effect the wishes of one, two, or more colonies? no; but to retaliate upon the enemy the injuries inflicted on the American people.

On the 26th December the united colonies were pledged for the redemption of the paper money—and why was this done? was it ever intended that any particular colonies were, or were not to be, independent of the rest? was it even supposed that after this resolution had been passed by congress, a colony might refuse to abide the pledge they had given?

There can be but one answer, but one remark, on these evidences of the exercise of the supreme power of the whole, that the people authorised and the people approved. Congress consisted of one branch, and as such lawfully and faithfully exercised legislative, executive and judicial powers—if they did not pass laws it was owing to a confidence, which was but in one or two instances abused, that the colonies would regard resolutions, calculated to promote the freedom of the people, as sufficiently binding; and let me say that, if any one in 1776 had been so hardy or abandoned as to deny the legality of the resolutions of congress, he would at that day have been scouted as an enemy to his country.

But, let me dwell upon the particular act of seventy-six, connected with the subject before us. Prior to 1776, no colony had attempted to grant commissions for making captures, or to establish courts for the trial of maritime cases. Congress, for the first time, undertook to make the necessary regulations on the 25th of November, 1775, and their act deserves very particular consideration.

It commenced by stating the propriety of retaliating upon the enemy the injustice experienced by Americans: that the people and not the individual colonies had resolved to fit out armed vessels for making captures: that, as it was but just that the guilty alone should suffer, it was necessary that "some laws be made to regulate, the tribunals erected competent to determine, the propriety of captures."

Such is the language of the preamble to the resolutions, and does it not emphatically prove not only the legality but the absolute necessity of the undertaking? Congress foresaw the danger that would be experienced, if the nation did not controul the conduct of its members: and accordingly they proceeded to pass resolutions the first granting the powers to seize enemy's ships—the second subjecting transports to capture—the third prohibiting any person from cruizing or making captures, unless commissioned by congress—the fourth recommending the colonies to employ their own courts for the trial of maritime captures—the fifth regulating the order in which suits were to be instituted—the sixth retaining the right of congress to review, upon appeal, all cases decided in the colony courts—and the seventh regulating the manner in which condemnation of prizes should be conducted and the proceedings distributed.

From the spirit and letter of these resolutions, I contend that no colony or colonies had a right either to make captures or condemn prizes; that every capture made under the mere authority of a colony would have been piracy; and that congress thus distributed its national powers, merely for accommodation,

and not because any colony had a right or claim to exercise jurisdiction in maritime cases. Not a word is said of any colonial independence or rights, not a single protest was made by any colony against the resolutions that I have enumerated.

On what ground, then, will gentlemen venture to contend against the authority of congress? I ask them to produce documents in reply to this, and not sophistry or law assertions. They may go and assert that congress exceeded its powers, but I trust the members of this committee will require something like evidence; I trust every man will ask by what right a single colony should undertake to overturn the measures taken by all the rest for the common good?

Sir, the congress which thus organized admiralty jurisdiction, which alone had the right to authorise captures, necessarily possessed the right to say whether the captures when made were legal or not—they allowed inferior courts to try in the first instance, it is true, but what would have been the effect had not a right to revise these decisions been reserved? Why, the very object of the original organization would have been defeated—privateers might have made illegal captures, violated the laws of nations, and abused the commissions granted by congress, and yet it is contended that all this might have been done, and that if sanctioned by an illiterate or interested jury, there could be no remedy: was there ever any thing more absurd than this?

But, fortunately, the resolutions of congress were couched in language that could not be evaded or misunderstood; a right to review decisions by juries was expressly reserved, and it was conceded by the colonies except in one or two instances, of which the case before us was one. So well convinced were the colonies of the necessity and utility of the resolutions, or rather of the right of congress to enforce them, that application was made to congress to make valid certain captures made under the authority of a colony. For this fact I give the friends of this resolution on your table the authority of the journals of congress; the fact is thus stated by judge Patterson, in the case of Penhallow and others vs. Doane's administrators, and I wish gentlemen to say if they can, when they undertake to notice this point, in what instance judge Patterson did not conduct himself as an upright judge and honest man.

"The individual states (said the judge) had no right to erect courts of prize, but under the authority of congress who derived their authority from the whole people of America, as one united body. Was it not considered during the war, by every man, that congress were thus vested with this and all the other rights of war and peace, and not the individual states? Why else was it necessary, by a special resolution of congress, to give validity

to captures made by privateers bearing commissions issued by the governor of North Carolina, previously to the 4th of April, 1777? And on what other principle could that resolution be transmitted to such of the United States as a law, in any prize cause which may be depending therein, and to secure the condemnation of vessels taken under such commissions?"

I can conceive no act, that could have more explicitly proved the rights and power of congress and the consent of the colonies, than this; yet we are told that the colonies were sovereign and independent, and of course that congress were ursurpers. This may satisfy some gentlemen, but I can assure you, sir, such arguments have no weight with me.

Now, sir, let me examine the famous law of Pennsylvania, which it is pretended, guarded the state rights, as they are rediculously called: and in the first place, let me ask, why, if Pennsylvania was independent, it waited for the authority of congress to authorise captures and courts to try them? the answer to this, every man must at once conceive. In November, 1778, Pennsylvania passed a law, and this law expressly declared that it was framed in consequence of the recommendation of congress: not a word is to be found of state sovereignty, rights or independence. The law in spirit and letter shows a dependence upon a superior power. The most material sections are the 5th and 6th—the former declares that "the finding of the jury shall establish the facts without re-examination or appeal:" and the latter declares "in all cases of capture an appeal from the decree of the judge of admiralty of this state shall be allowed to the continental congress?" From this, it appears, that, although common law proceedings were renounced in the preamble, the right claimed by congress to review all cases upon appeal was objected to, and that the decree of the judge was alone to be considered on an appeal.

The reasoning that I have already used, to prove that congress alone had a right to say how decisions in maritime cases should be made, proves this act of Pennsylvania, in every part inconsistent with the resolutions of congress, was absolutely null and void—and if gentlemen deny this, I hope they will condescend to favor us with the grounds for their opposition. The noise about sovereignty will not answer, for I find, that, even in the state constitution of 1776, Pennsylvania declared that it was adopted upon "the authority of the people, agreeably to the directions of the honorable American congress."

The gentleman from Fayette (Mr. Tarr) was unfortunate in all that he said about appeals, for it seems he does not understand the meaning of the term. He says the law of Pennsylvania denied an appeal from the finding of a jury upon the facts:

what is an appeal? Sir, it means a revision of fact as well as law, and congress no doubt well understood its force; if they had not intended to review the facts, they would not have used that term: but they used it, and wisely too, for if they had been restricted to an examination of facts, there is no manner of abuse that could not have been committed; there is no sort of outrage on the laws of nations and property of neutrals that might not have been perpetrated, and sanctioned too by juries either interested in privateering or ignorant of the heavy responsibility of their station: freebooters might have pillaged, an irresponsible jury might have perhaps unintentionally declared the capture lawful, and thus the nation would be subjected to all the responsibility and all the disgrace. And here, returning to the law of 1778, let me ask, by what right or authority Pennsylvania undertook to say, "so far will we abide by your resolutions and no farther?" will gentlemen have the goodness to say, what court had occurred from 1776 to 1778, which altered the condition of congress or the individual colonies? In 1776, the whole people united, for common good; state sovereignty, at one time perfect, was then completely merged, as to all national concerns, in a supreme power: the idea of states independent of each other is absolutely resisted in every line of the declaration of independence; the idea perhaps never entered the head of any man who was friendly to the freedom of America—I repeat, then, let gentlemen show, if they can, by what right a part, a comparitively diminutive part, resisted the resolutions of all the other associates! The declaration of independence was a bond of union, which honor forbid any colony to depart from, yet we find Pennsylvania setting up, not only a co-ordinate, but a paramount claim and power.

If the enemies of the country had been contriving a plan to ruin it, they could not have urged one more likely to become injurious: the example of resistance in one case might have spread disaffection, and destroyed the hopes of the community from the toils of its sages and soldiers. And let me say, that, in making this resistance, Pennsylvania took a most ungenerous advantage of the union; for it must have been well known, that, at a time when every arm was necessary to national salvation, the congress would not attempt to enforce the authority so shamefully disregarded by one of the colonies.

On the whole, I contend, therefore, that the law of Pennsylvania, far from impairing the rights of congress, was itself a dead letter in every part, in which the congress resolutions were evaded.

With respect to the particular case of Olmstead, I might pass it by, were there not some facts connected with it, that are

not generally known. Olmstead was among the earliest adventurers on the ocean, who acted under the orders of congress in making prize of enemy's property; but as was after the case, his enterprising spirit was the cause of his ruin. Captured by a British frigate, he lost his property, and was thrown in irons in the hold of the vessel that took him: in that doleful situation he remained for some time with his companions, but was at last sent on shore at Jamaica—there disease awaited him and subjected him to new misfortunes. At length, after experiencing every hardship and indignity, that Americans were at that time subject to, Olmstead and his companions were put on board a British transport vessel called the Active, bound for the port of New York. It is not necessary for me to tell this committee, what sort of prison awaited him in that harbor—it is not necessary to ask any man within these walls, what he would have done in Olmstead's situation—the never ceasing regard for self preservation would have given even to a timid man the courage or resolution flowing from despair. But Olmstead had courage, and he had the other great requisite discretion also.

When at sea Olmstead planned, with his fellow-prisoners, the capture of the Active; and when within two or three days sail of land, they executed their plan, by securing the captain, mate, and passengers of the Active, in the cabin. A contest was kept up for some time between those confined and those on deck, but at length the vessel was got completely under the controul of Olmstead, and was within five miles of the port he meant to enter, Egg Harbour, when an American vessel of war, the Convention, hove in sight, and shortly after a privateer, the Gerard. As soon as the Convention came up and learned the situation of the Active, its captain sent off a boat to aid Olmstead as was alleged; but Olmstead replied he could get the Active into port himself. Some intercourse, however, took place; and upon Olmstead's going on board the Convention, he was forcibly detained, and a prize-master was put on board the Active, who carried her into Philadelphia.

The gentleman from Fayette (Mr. Tarr) when upon this part of the subject said, that Olmsead could not make way, whilst the rudder was wedged. I have sought for the proof on which this declaration was made; but I confess, sir, I have not been so fortunate as to find it. Indeed, I have found only evidence to the contrary. It is declared in the depositions read on the trial of the Active, not only that that vessel made way, but that any vessel might make way, without a rudder, by substituting a spar or cable, or by a particular adjustment of some one or more of the sails. The fact, I believe, is notorious, that vessels, having by distress of weather or accident, lost or damaged

their rudders, have notwithstanding safely reached their ports of destination.

And the gentleman was equally unfortunate in another remark. He endeavored to prop up the verdict of the jury, and to prove that Olmstead was not the true captor, by saying that Olmstead had entered into an engagement to abandon the Active when near the land. Sir, if it was true, that such an engagement had been made by Olmstead, as a condition for getting the rudder free, I ask you and the members of this committee, if it could have been intended as any thing else than a stratagem? and let me ask, again, if such a stratagem was not perfectly justifiable? gentlemen should remember that stratagem forms a most material part of warfare, and if Olmstead could have carried his point by stratagem instead of bloodshed, I for one believe he ought to have done so.

But I deny that any such compromise was made, and I resort to the evidence given on the trial to support this position. There are some remarkable circumstances, connected with the testimony given on the trial of the Active, which I beg this committee to bear in mind. We must inquire into the character, and the motives of the witnesses, in order to weigh accurately what they swore, and to ascertain whether spite and malice did not actuate some of them.

On the trial of the Active the evidence of six witnesses, was given in, in the form of depositions, as is the practice in admiralty courts. Not one of those witnesses had any motive to swerve in favor of Olmstead, most of them may well be supposed to have had prejudices against him, and three of them, Underwood, Jackson, and Taylor the mate were manifestly under the influence of passions, that had been originally excited at sea. These three stated that a compromise had been made, but the other three were either silent on that point, or absolutely contradicted the assertion. Underwood, when confined in the cabin, declared that he would rather blow up the Active than let her fall into the hands of Olmstead, and he subsequently said he would be glad to be overhauled by an American armed ship, that Olmstead might not get the vessel. A man, actuated by such passions and so much enraged at the success of Olmstead, would not halt in his testimony at a point, upon which the fate of Olmstead might have been well supposed to depend. And accordingly his testimony was of a description to disprove Olmstead's and establish Houston's claim. The testimony of Jackson and Taylor partakes of the same character.

But, if we examine the evidence of the other witnesses, we find that it rebuts that of Underwood, Jackson and Taylor, and proves that the only compromise or agreement entered into, was,

that the rudder should be unwedged if Olmstead would cease firing and not knock off the stern boards. And lest any doubt should remain, I will quote the very words of the witnesses. Mr. Holmes, who was in the cabin with Underwood and Jackson, and who was as attentive to the transactions as either of them, declares:

"Mr. Jackson then made a second tender of his former offer to Underwood and his mate, and after talking some time, Underwood gave Mr. Jackson liberty to make the best terms for himself that he could, and that he would unwedge the rudder. Mr. Jackson called to the people on deck, who were then knocking off the stern boards of the vessel, and said that if they would take the boat when they made land, he would unwedge the rudder, to which they answered in the negative."

Mr. Holmes then goes on to say, that, upon those on deck agreeing to cease firing, the rudder was unwedged, and that a parley took place.

Another witness, George Roberts said he "heard Mr. Jackson, one of the persons below ask those above if they would give up the vessel, when they got near the land, and that some of those on deck said to each other, that they had begun the thing and must now go through with it, and that they never would give her up. That those on deck could have steered the vessel by sails and other means, if the rudder had not been unwedged."

Robert Robson, another witness said "those on deck got crows and handspikes and prized off some of the stern planks, whereupon the passengers below consulted together, and begged of those above that they would not expose them to the weather, and said that if they would not pull off the planks, they, the passengers, would beg the captain to let the rudder be unwedged; that this was desired by two of the passengers, Holmes and Jackson, and that thereupon the captain unwedged the rudder."

So that, Mr. Chairman, if we are now to be governed in any degree by the testimony given on the trial, I contend our decision must be favorable, and not as supposed by the gentleman from Fayette, unfavorable to Olmstead.

In the next place, sir, let me ask the attention of the committee to the decision of the jury. It is contended, that it was unlawful to review the facts found by the jury, but here the first question is, did the jury find any facts? that is, let us abandon, for argument sake, the question relative to the powers of congress and enquire what the finding was. And here as in all the other points a dilemma awaits the advocates of the resolutions before us, for unfortunately for them no facts were found. The jury, ignorant no doubt of the principles of maritime law, did not say whether the capture was legal or illegal, nor did they say

who were the captors; they confined themselves to a simple distribution of the prize amongst all who claimed. To Gideon Olmstead they gave a part, and as they were on their oaths we may thence very reasonably conclude that they had not made up their minds upon any one fact, connected with the case; as honest men they could not say, they did not say, that Olmstead was not a captor, or that the contest had not ceased.

Now I ask every man to answer was this distribution a verdict? when parties claim an article as the exclusive property of each, and when jurors are sworn to decide, to whom it of right belongs, is it usual, is it just, to make a division? I say it is not, and the very words given by the jury as their finding, prove that they made no decision one way or the other.

As to a verdict, what the jury returned deserves no such title: their finding was more like the act of a set of freebooters, dividing the spoil, and instead of being advocated at this day, ought to be obliterated as a stain on the character of Pennsylvania.

Such as it was, however, upon this finding the judge of the court, Mr. George Ross, proceeded to condemn the prize; and immediately thereafter, Olmstead appeared in court, and demanded an appeal, from the verdict of the jury, as well as decree of the court to the congress court of appeals. Here, if the judge had the knowlege and veneration for state rights, that has been mentioned, might he not, would he not have paused? would he not have hesitated and said, "you may appeal from my decree, but not from the finding of the jury?" Why he did not take this course, I leave gentlemen on the other side to inform the committee; for my own part I believe that state rights never were thought of until the danger of losing this money became apparent.

And I am strengthened in this belief, every step I take. The state granted an appeal, and did not stop even there; the state appeared by council before the very tribunal, which it is now pretended, was composed of usurpers: yes, the state did plead, both to the fact and law, before the very men, who are now said to have had no authority to hear appeals from the finding of facts. Sir, if gentlemen can get over these strong and striking facts, gentlemen who a few days ago shuddered at the bare mention of an appearance before the United States supreme court in Nichols's case, I will admit that they have more ingenuity and ability than I am at present disposed to give them credit for.

Much has been said about the honest jury, who tried this case. Sir, their finding shows more honesty than knowlege, I admit; but let me remark, that men are at all times influenced by the same passions and prejudices; and it will not be doing great violence to suppose that, as absolute impartiality was not to have

been expected, whatever leaning the jury had was in favor of their own townsmen and of their own treasury. Their foreman was himself largely concerned in privateering, and I am informed that some others were partakers of the same mania, that in 1778 so generally prevailed in the sea ports.

But, sir, as we are told of honest men, let us contrast with this jury, the venerable congress of '76, the able and disinterested men, who composed the court of appeals, and what must be our conclusions? Why, sir, we shall disparage the jury, by speaking the truth, and by asserting that the congressmen were at least as honest, much better informed, much more interested for the national honor, and above all suspicion as to interested or mercenary motives. Every citizen of Pennsylvania, the judge, the jurymen, were somewhat interested as parties against Olmstead, but the court of appeals could have had but one motive and but one object, the desire to decide honestly and for the credit of themselves and country. That court was held and a decision given in the very place where judge Ross had tried the cause; when all the parties, jurymen, and witnesses were present, and within twenty days after that trial terminated. The members of congress were as warm advocates of the legislative rights of the states individually, as Thomas M'Kean, governor Reed, or Mr. Hutchinson; they made greater sacrifices, and had as deep a stake at issue, as any other persons whatever. It is shameful, then, to asperse the character of these men, as usurpers and enemies of state rights, whose only crime was to decide honestly and in favor of a friendless sailor against the interested claim of Pennsylvania.

After having heard all the parties and taken time to deliberate, as they state themselves in some of these resolutions, the court of appeals reversed the sentence of the judge as well as the distribution made by the jury, and declared the prize to be the property of Olmstead—and very correctly, for the Activie was within five miles of a port when met by Houston, the contest had ceased, and nothing less than a miracle of a hurricane could have prevented Olmstead from carrying his prize in perfect safety into port.

Upon this decision of the court of appeals, it is, that so much censure is cast, hence has arisen the clamor about the sacredness of jury trial, as if that system was more perfect than other human inventions. But, what respect is jury trial really deserving of, that is jury trial on prize causes during the revolution? judge Wilson, in the debates in the convention answers this much more satisfactorily than I could do:

Speaking of that part of the United States, constitution, which grants appellate jurisdiction to the supreme court, he said:

"The jurisdiction as to fact may be thought improper, but those possessed of information on this head, see that it is necessary. We find it essentially necessary from the ample experience we have had in the courts of admiralty with regard to captures. Those gentlemen, who during the late war had their vessels retaken, knew well what a poor chance they would have had, when those vessels were taken into other states and tried by juries, if the court of appeals had not been possessed of authority to reconsider and set aside the verdicts of those juries. Attempts were made by some of the states, to destroy this power, but it has been confirmed in every instance."

And in another speech, judge Wilson said "that there had been more violations of jury trial in Pennsylvania within five years during the revolution, than in England for a century." Such was the respect paid to that system, for which so much veneration is now pretended by gentlemen: I say pretended, because I know from their efforts at arbitration systems that they do not value it more highly than, if as highly as, I do.

But, to return to the subject. As soon as judge Ross received the decree of the court of appeals, he refused to execute it, and in direct opposition to it ordered the proceeds of the prize to be brought to him into court. The legislature or executive council of Pennsylvania applauded the resistance, and passed some resolutions about the sanctity of jury trial, &c. and hence we are eternally told of the excellent men, who composed that council and legislature. I have no wish to depreciate their merits, but as comparisons are drawn, I may be allowed to say that the congress of 1776 was composed of men in every respect at least equal to the representatives of Pennsylvania: nay, if we are to rate abilities and integrity according to the stations filled and the number of electors, I contend that congress was composed of men more enlightened, and of as sound integrity, political or private, as any other persons on the face of the earth—their names will descend to the latest posterity, honored and revered, whilst those who now revile them, if they shall leave any trace of an existence, will perhaps be remembered only to be despised.

The conduct of judge Ross, as I have heretofore stated, was extra-judicial, besides being in opposition to the supreme authority; and I shall be glad to hear gentlemen endeavoring to account for it. The only excuse, that, in my opinion, can be made for him, is this, he doubted the right of the state to resist the union, and the right of his court to refuse to execute the decree of the court of appeals. To this I attribute his refusing to execute either the verdict of the jury or his own sentence: instead of paying or seeing paid, into the treasury that part ad-

judged to the state, he gave it to Mr. Rittenhouse, in his individual capacity, and took care to secure himself against Olmstead, by obtaining from that gentlemen a bond of indemnity. He no doubt reasoned in this way "congress has asserted the right to reverse the whole proceedings in the admiralty courts; this state has denied their right to reverse the verdict of a jury: should I execute the will of the state, I shall become responsible under the decree of the union; the case is at least undecided, and it is my duty to secure myself against loss when the suit shall terminate."

Such was, no doubt, the argument of judge Ross; he acted accordingly, and I ask gentlemen to account if they can for the apathy with which Pennsylvania looked on, whilst money that it claimed was thus transferring from hand to hand. Why, if the property belonged to it, did it not call on Ross to put the money at its disposal, under the finding of the jury?—for this simple reason as I believe, that, amidst all its protestations, the state itself did not consider the property as finally awarded or the question as completely settled.

And I am confirmed in this opinion, at finding the same apparent indifference characterising its conduct, after the money had been paid to Mr. Rittenhouse. No one will pretend, that the state was not greatly in want of funds, during the war; why then did it permit a transfer from Ross to Rittenhouse and the retention by the latter, if the money in question really belonged to it? Such conduct was novel in any government, perhaps unexampled in this state, and can be accounted for in no other way than that which I have already mentioned.

Nor did Mr. Rittenhouse differ in opinion with judge Ross, he also reasoned in this way, and the note at the bottom of the certificates prove it—"judge Ross agrees to pay this money into my hands, in case I give him a bond of indemnity, as security against Olmstead; I will give the bond, and retain the money; as soon as the question shall be decided to whom it belongs, I may safely give it up, but otherwise the money *will not be* the property of the state unless it secures me against Olmstead's claim."

In all those proceedings, as well of the state as of its officers, I can see nothing to justify the assertion that the money belonged to the state, or that it was so considered to belong, by either: The contrary is to be inferred on every reasonable ground.

Some allusion has been made to the 9th article of the confederation, and an inference attempted to be drawn, which facts do not justify. The articles were proposed in 1778, but they were not binding until 1781; they could not therefore affect the decree of congress of December 1778, by an ex post facto operation.

Yet gentlemen quote the 9th article as if it were of any importance to them. Sir, if the articles of confederation prove any thing, it is in opposition to the claim of Pennsylvania. True, it is said that members of congress shall not act as judges of admiralty, but this of course applied to the future, that is after 1781. But it is also true, that by the very same article, the right to reverse the findings of juries as well as the decrees of the state judges, was specifically confined to the congress; and Pennsylvania assented to this, notwithstanding all the clamor about state rights and jury trial. If Olmstead's case can be supposed to have been pending, then the assent of Pennsylvania to those articles, amounted to an abandonment of her prior assumption—if the state felt so keenly, why did it not propose a clause restricting the power of congress? why assent to the very claim, which it is pretended congress had no right to assert or enforce. I pray gentlemen to reconcile if they can, all these notorious facts with the pretended sovereignty of Pennsylvania.

As to the passive conduct of congress, after the resistance of Pennsylvania; let me again remark, that it was not the effect of fear for themselves or of doubt as to their power and correct conduct: having the supreme power in their hands, by the choice and approbation of the whole people, nothing prevented them from exercising it against a contumacious part thereof, but the peculiar state of the country. They contented themselves with a disapprobation of the conduct of Pennsylvania, and may be supposed to have thus reflected; "We will not act, as you representatives of Pennsylvania have done, we will not commit any act that may jeopardize the safety and liberties of the colonies; we are superior to any petty, paltry, considerations, and would think ourselves disgraced by resorting to sophistry and quibbles about forms of law; and prefer a dignified abstainance from a controversy, which could only gratify the enemies of both. When peace shall take place, we hope from the virtue and discernment of the people, a confirmation of the rights we claim." Nor were the expectations of the friends of congress disappointed.

Olmstead, sir, may well be supposed unable to do any thing, when the congress of '76 had failed: he awaited events, and took advantage of them as they arose. Sometime after the close of the war, he proceeded to assert his right: and here let me again remark, that in maritime or prize causes the suit is brought against the prize itself; and the claimant or libellant has a right to pursue the property taken, into whatever hands it may pass: Olmstead, therefore, commenced an action against judge Ross, who had unlawfully taken his property and transferred it to Rittenhouse, and he recovered the bond given to the former by the

latter. Upon this bond, sir, he instituted a suit in the supreme court of Pennsylvania, and I hope the committee will mark the consequences, as the gentleman from Fayette has mistaken or misrepresented them, and as the same or similar misrepresentations appear in the reports on this subject to be found in the journals of this legislature. Gentlemen may think this harsh, but if it is true, my duty demands that I should overlook all minor considerations, and I hope to show that what I say is true.

Sir, it has been said, that on the hearing of the case of Ross vs. Rittenhouse, the supreme court of this state, denied the right of the court of appeals to reverse the proceedings of the admiralty court; and it has been said that Olmstead therefore lost his suit in our state court. To show the grossness of this statement, it is only necessary for me to refer to the official report of the proceedings, and quote the prominent facts.

The trial was held in April term 1792, before judges M'Kean, Shippen and Yeates, and the questions for decision were these:

"1st. Had the court of appeals jurisdiction to investigate facts, after a trial and general verdict by a jury, and to give a contrary decision, without the intervention of another jury?

"2d. Had the court of common pleas of Lancaster county jurisdiction, in the action by Olmstead and others, against the executors of the judge (that is judge Ross) or should not the decree of the court of appeals have been carried into execution by that court, or the court of admiralty, without the aid or interference of any common law court?

"3d. Can an action be maintained on this bond, the condition of which is virtually to disobey the court of appeals and the laws of the land, if that court had of right a power to decide contrary to the general verdict of a jury? And, can the plaintiffs, without having defended, or given notice to the present defendant of the suit in the court of common pleas, support an action on this bond?".

Such, sir, was the division, made by judge M'Kean, of the subject before the court: now let us see what that gentleman said upon the first, and principal point.

"I conceive it proper to premise (said judge M'Kean) that I took notice at the time this action was first brought to trial in this court "that when the business was before the court of appeals of the United States in December, 1778, I had the honor to be president of that court; but declined sitting on account of my connection with this state as chief justice and otherwise; and that the same reason still subsisted. That the next thing to giving a righteous judgment was to endeavor to give general satisfaction, which circumstance might not probably be attained by our decision of the present controversy, both court and jury

being in some measure interested, as they were all citizens of Pennsylvania. For these reasons I expressed a wish, that some mode might be adopted for trying the cause in the supreme court of the United States. This proposition was then assented to, and a juror withdrawn; but, it seems our expectations have been disappointed, and we are obliged, at last, to decide the controversy."

These were the sentiments of judge M'Kean, and as I go on to state his opinion, I beg the committee to bear in mind that he confesses himself in some measure a party to the suit.

To the first question he answered that congress had no right to reverse the finding of facts or verdict of a jury.

Mr. Tarr. The gentleman said a while ago there was no verdict; now I am glad to see he is showing there was. He said it referred to no facts, here it expressly refers to facts.

Mr. Duane. I am quoting the words of judge M'Kean, and not stating my own opinion, as the gentleman would have known, had he paid any attention to the subject.

Sir, it is not surprising that judge M'Kean decided against the court of appeals, nor is it wonderful that he has since exhibited something like inconsistency. We find from the sentiments I have quoted, that he considered the supreme court of the United States a proper and impartial tribunal, yet when governor he did not endeavor to have the case referred to that court. And in a subsequent part of the case before me, the same gentleman declared, and I beg gentlemen to notice the fact, that Olmstead could not maintain his suit in any other than an admiralty court.

But, in opposition to the opinion of Mr. M'Kean, relative to the court of appeals, the opinions of both the other judges are arrayed. Judge Shippen said:

"As to the first question, I own I am not convinced, that the sovereign power of the nation, vested by the joint and common consent of the people of the states of the union, with the exclusive rights of war and peace, and with the consequent and necessary powers, of judging in the last resort of the legality of captures on the ocean, can, either in reason or sound law, be precluded from deciding an appeal, both of facts and law, arising in cases of prize, merely because they had recommended to the states, to pass laws to establish courts of admiralty, for the trial of prize causes, in which the facts were, in the first instance, to be tried by a jury, according to the course of common law. 1st. Because in the nature of things, and according to the course and practice of all civil law courts, all decisions in the courts of the last resort, upon *appeals*, are made upon a view and consideration of both fact and law. 2d. Because otherwise no steady and uniform rules of decision could be established,

and foreign nations could never know, or confide in the grounds of our decisions: and it does not appear to me material, that all the parties were American citizens. And, lastly, because, in the present case, congress had explicitly, reserved the power of finally deciding upon appeal *in all cases.*"

Such, sir, was the opinion of judge Shippen, and I ask gentlemen, if it is not entitled to as much regard as that of Mr. M'Kean? If I were to resort to the journals of the legislature for an answer, I should find them loaded with denunciations of this Mr. M'Kean, upon whose single, and biassed, opinion, the very men, who denounced, now place such reliance.

Mr. M'Kinney. Will the chairman suffer the gentleman to go on in this way, ridiculing and abusing the members of this house? What, if you suffer him to go on in this way, will all the people, gazing on here, think of it?

Mr. Duane. If, sir, gentlemen, who have heretofore pronounced every sort of anathema against Mr. M'Kean, now cling to him as an infallible authority, I presume I have a right to tell them of their inconsistency. It is not necessary, however, to my purpose, that I should do more than thus twitch their consciences.

From what I have read, sir, it appears, that judge M'Kean was of one opinion and judge Shippen of the opposite opinion: the third judge, therefore, Mr. Yeates, was the umpire, or the person to decide what should be the declaration of the court. That gentleman coincided with his colleague, judge Shippen, so that the supreme court of this state did not, as one of the reports on the journal states, declare the decree of the congress court of appeal, extra-judicial and void—the court, on the contrary, declared that decree valid: and all the judges agreed, 1st. that the supreme court of the United States was the most fit and impartial tribunal for the hearing of the case; 2d. that Olmstead had no resort but to an admiralty court in the first instance.

Such is a true statement of the case *Ross vs. Rittenhouse:* it differs materially from former statements, but is not the less correct—if there is any error, gentlemen will have an opportunity to point it out.

I now, sir, am to shew the powers of the United States courts. The constitution of the United States, framed by the wisest and worthiest men of the nation, that instrument which has so essentially promoted the unexampled freedom and prosperity of these states for the last twenty-three years, cannot be scoffed at by gentlemen without rendering them as ridiculous as unpopular. That instrument defines the powers of the United States courts, in the second section of the 3d article. It grants those courts alone, the cognizance of all cases of admiralty and mari-

time jurisdiction, and gives to the supreme court appellate jurisdiction in prize cases, both as to law and facts.

The law of congress, of 1789, distributing amongst the courts, the powers authorised by the constitution, granted the district courts, original cognizance of all civil causes of admiralty and maritime jurisdiction.

If therefore, the case of Olmstead had not been decided by the congress court of appeals, if it yet remained pending after the year 1789, courts were established, and with the consent of Pennsylvania, competent to determine it. Those courts, which Mr. M'Kean declared competent and impartial were open to Olmstead, and he accordingly entered them, in 1802, after failing in efforts to get a settlement otherwise. In the same year the heirs of Mr. Rittenhouse filed an answer, and in January 1803, after full time and notice had been had by the state, if it had a right to interfere, judge Peters confirmed the decree of the congress court of appeals. In the same month, governor M'Kean sent a message to the legislature, in which he announced the decree of the district court; declared that congress had no right to reverse the decision of the Pennsylvania court; deprecated resistance to the decree as extremely unpleasant; said that "the state not being made a party," an appeal could not be made to the United States supreme court; and submitted the facts, as he alleged, to the discretion of the legislature.

Between this message and the opinion of 1792, the committee will not fail to notice considerable variance; he was at one time in favor of a reference to the United States courts, yet in 1803, he alleges the impracticability of an appearance—and why? because the state was not a party, and yet he sanctioned a a law placing Olmstead's money in the treasury.

Now, sir, I shall be glad to learn how gentlemen will reconcile their devotion to Mr. M'Kean's authority and their assertion that the state was a party; and I shall be glad to be informed, supposing the state to be a party, what prevented the United States supreme court from hearing upon an appeal. To this, perhaps, gentlemen may answer, the 11th amendment of the constitution interfered; but I ask them to read that amendment, to compare it with the article amended, to recollect their repeated declarations the other day about the necessity of sticking to the dry letter of the constitution, as they termed it—and having thus reflected, let them say, if they can, that the admiralty case of Olmstead was at all affected by the amendment alluded to; I deny that it was, and I invite the scrutiny.

In consequence of the message that I have mentioned, the legislature passed a law in April, 1803, requiring the heirs of Mr. Rittenhouse to place Olmstead's money in the treasury, and

promising to protect them, in case of compliance. I will not stop here to enquire who drafted that law, or under what motives it was drafted—it had the desired effect in the first instance, of putting under lock and key, the lawful property of a worthy, persecuted man.

Olmstead, hoping for a compromise, wasted four years more of his existence, awaiting the justice of Pennsylvania; from a change of men, he hoped a change of conduct; but the deposit of the money in the treasury-chest formed an insuperable objection to his claim, and, tired out, he demanded in 1807, the execution of the decree passed in 1803, in his favor: and here, sir, let me remark that, as had been throughout the case, the U. States court did not proceed with a precipitancy or zeal, that would probably have been evinced, had the motives, which are imputed to it, really governed its judge—delay was preferred, as well to afford the state an opportunity to be heard, if it desired it, as because the district court wished its decree to be revised by the highest tribunal in the nation.

And in consequence of this delay, Olmstead resorted to the United States supreme court, requiring it to instruct the district court to carry its decree into effect—an order to that effect was issued, the whole proceedings were then submitted to the supreme court by judge Peters, and in February 1809, that court ordered him to execute the decree. For my part, sir, if I were asked in what way this affair could have been conducted with the greatest precaution, and with the strictest regard to the situation of the state, I could not point out a more eligible course than that pursued—the courts, if at all deficient, wanted that energy throughout, which is necessary to a faithful execution of their duty.

And yet, sir, according to the declarations of gentlemen, one would imagine that all the rest of the states had combined against Pennsylvania, or at least that Pennsylvania had been treated in a manner different from that observed towards any other state. But, if the members of this committee will take the trouble to peruse the books in the library, they will find a case, even stronger than that of Pennsylvania, decided by the United States courts—the case of *Penhallow versus Doane's administrators*, in which the verdicts of two juries of New Hampshire were reversed, under judges too, against whom not a tittle of complaint can be made.

The gentleman from Fayette (Mr. Tarr) has noticed the conduct of our governor, after the process had been issued by the district court in April last, but I shall defer my remarks on that part of the subject until the third resolution shall come before us. My present object has been to shew that the conduct of the

courts of the union was legal and constitutional, and I trust that I have shown it. I will, however, notice one or two remarks on the general subject, which some gentlemen appear to think very forcible.

We have been told of a thirty years resistance on the part of Pennsylvania, and I might answer this at once by saying, if length of resistance is proof of a good cause, why is not the union entitled to the credit of it as fully as Pennsylvania? the people of all the rest of the states have been the party against those of Pennsylvania--the congress of '76 have been the party against twelve jurymen of Philadelphia--all the courts of the union and the supreme courts of Pennsylvania have been the party against the legislatures of 1803 and 1809—and, in these circumstances, who should give way? Sir, instead of justifying, the thirty years resistance aggravates the shameful conduct of this state—as well might a man, holding the property of another for thirty years, claim it as his own in consequence of the duration of the tenure. The state was originally wrong and every day's delay added to the indecency—error is encreased, not renewed, by persistence.

Much has also been said of the state sovereignty, and indeed these words would seem to have some charm in them, such is the professed adoration in which they are held—for my own part, sir, I am so plain a man that I ask gentlemen to enlighten me by their definition of those words. What is meant by state rights and sovereignty? do gentlemen use the words in the enlarged sense, in which the subjects of a monarchy regard the term of emperor or king? I have been accustomed to believe that there is no sovereign in this country but the people—I have been taught that the will of the majority is the law—that the people of the union are sovereign for all national purposes, and that the people of each state possess so much sovereignty only as is necessary for the management of their immediate and internal concerns. This, sir, has been my republican, or democratic, creed, since I have had the power to reason and reflect; but perhaps gentlemen can tell me that I have been thus long in the dark, and I pray them to spare me some share of their intelligence. Under my present impressions I consider all that is said about state rights and sovereignty as an unmeaning jargon.

As to a consolidation, sir, of which something has been said, but more insinuated, I will mention my sentiments on that point. A consolidation of the power of the whole people saved their liberties in the revolution, and if they wish to preserve them, the people must keep their power consolidated. Without that consolidation, how could the colonies have conducted the war,

made treaties, or formed alliances? without that consolidation, in what better condition would the colonies have been, or would the states now be, than the states of Greece, ready at any impulse to shed the blood of each other, and preparing the way for some modern Philip to overturn their liberties.

Sir, the sovereign or supreme power of the people has been wisely delegated by them, partly to the government of the union, and partly to the government of the states. The system has gone into operation with wonderful success, and will no doubt continue to sustain the liberties and independence of the people, if unhallowed hands can be kept from interrupting its vivifying motion.

I must apologise, as I now do, to the committee for occupying so large a portion of its time: I have tried to prove that the courts of the United States have acted constitutionally and legally: and I shall with pleasure hearken to those who may follow me, still hoping that the legislature of Pennsylvania will not pass resolutions, which cannot but disgrace us in the eyes of the union and of mankind; and which must if adopted, cast an indelible stain upon the fair character of republican government, at the very moment too, when singular and alone in its possession, we ought to be anxious for its purity and preservation.

Mr. Spangler moved that the committe rise—which was agreed to.

The committee rose, and the house adjourned.

WEDNESDAY, JAN. 31

The house proceeded further to consider the resolutions in the case of Gideon Olmstead.

Mr. Piper in the chair.

Mr. Tarr. Mr. Chairman—I was charged yesterday with having imputed to the editor of the Aurora, the having apostatised from his principles. This charge is not such as I would have made, even if it was well founded. The gentleman has charged me with it, and says by implication I alluded to the editor of the Aurora. I stated that there was a paper printed in Philadelphia, which was then considered the first republican paper in the commonwealth—that this paper advocated the law of 1803; and I said it's editor had since changed his sentiments, and if so he had changed his opinions or his principles. It is said, that what I said was an attack upon the gentleman's (Mr. Duane's) father, the editor of the Aurora; and I was also challenged to shew where that editor had abandoned his princi-

ples, or where he differed from the position he now takes. I shall proceed to read a few paragraphs, altho' I have not charged the Aurora, yet to prove to this house that it has changed its principles. I have a paper of March 2nd, 1808, not only in favor of the law of 1803, but in favor of calling out the militia; and a paper of the 11th of April 1808 against it—and if it has not abandoned its principles, I don't know what it is. I shall read an extract from a paper of March 2d last.

[Here Mr. Tar read the following extract from the Aurora. "It seems that infatuation and folly had become epidemic at Boston, had spread to congress, and communicated its infection to Lancaster.

"The following message, it is said, has been communicated to the state legislature. The governor, no doubt, is sworn to obey and support the laws of this commonwealth, and there is a law on this special subject, which authorises the governor to call out the militia and protect the parties."]

Here it is declared that the governor has authority to call out the militia in the case of Gideon Olmstead. Here is a paper of March 30th. "The following bill was read in the house of representatives of this commonwealth, on Thursday, and was the order of the day yesterday—It affords us peculiar satisfaction to perceive that the state government is likely to frustrate the artifices of wicked men, who have sought to involve the state in conflicts with the general government. The executive has completely fulfilled the letter of the law of 1803; and we make no doubt that the heirs of D. Rittenhouse will soon be released from the irksome position in which they have been placed, by the replacing Olmstead's money in his hands; by this means the state will have fulfilled its engagement, the measures, secretly meditated against the officers of the state, will be frustrated, and those who triumph in prospect of discord, will find themselves disappointed."

Here the editor of the Aurora approves of the measures of the governor, and gives the construction to the law, that the governor gave, when he called out the militia. The paper of the 11th of April contains different language.

"The confidence of a former legislature in the legal talents of Mr. M'Kean, precipitated them into the gross error of the law of 1803, and the want of knowlege of this subject, as well as a want of deference for the advice of the legislature, then in session, hurried Mr. Snyder into a state of warfare with the United States.

"The law of 1803 did *not authorise the employment of a military force*, and the wonderful *illumination* alone of the present se-

cretary of the commonwealth, and other equally imbecile advisers, could have furnished such an interpretation of its text."

Will the gentleman ask better, or more explicit documents to prove that the editor of the Aurora has changed his principles, or his position. First he approves the conduct of the governor, and states that there was such a law--in the next it favored the letter and spirit of the law—and in the next he declares the governor has levied war against the United States. He does not give a reason for it; but just says one thing, and the other.

When I am up, I will ask if he has not changed his manner of conducting this paper, or if the state of Pennsylvania has changed?

The gentleman has very ungenerously imputed certain things to me, in a very ridiculous, and adsurd manner; and I call upon the house to protect me from the absurd insult. I was not brought up to, nor will I ever behave otherwise than decorous, in private life; much less as a member of the legislature of Pennsylvania. If indecerous language is permitted, it must bring to disgrace the legislature generally. The gentleman, if he has no respect for himself, ought to have some for the character of his constituents. But for what I said, and a few others, the gentleman would have been brought to the bar of the house, to answer for insults offered to the house—for declaring that the thunderbolts of vengeance were pictured on the hollow eyebrow, or some such thing. I wish to inform the gentleman that I will not behave indecorous; and when I do, I hope the house will call me to the bar, and take measures to expel me; and scout my character, with that of Conrad Weiser.

Mr. Duane. This committee, Mr. Chairman, cannot but do me the justice to admit, that the language, used by me yesterday, was fully merited; nor can the gentleman himself wonder at my conduct, when he reflects upon the irrelevancy, if not indecency of his opening remarks. What has been said just now has nothing to do with the general subject, and only proves what the gentleman yesterday really meant, but meanly insinuated. I have not the papers, that he has alluded to in my hands, but I promise to shew from them, that the gentleman has misquoted. As to what has been mentioned about expelling me, I will say, that I very much regret the gentleman's influence; if he meant to do me a personal kindness, I thank him; but as I cannot suppose that was his motive, I will inform him that I should have been proud to have been expelled from this house, since it would have been a punishment for speaking plain truth. I know, that I have been sometimes unfortunately misunderstood, or grossly misrepresented, this may have been sufficient to justify the intentions of some gentlemen, but I do not regret the ex-

pression, that my recollections brings before me—on the contrary I am proud of them all.

Mr. Leech. Mr. Chairman—After all that has passed—after we have been in session eight weeks—after many attempts to postpone this business, and to keep the evil day afar off, I was prepared to hear, what I yesterday did hear; the governor, the officers of government, and the government itself denounced, as unworthy the public confidence.

Mr. Duane. I beg leave to explain. I said that at the opening of the session I entertained some hopes from believing the governor an honest man; and even now I do not couple him with some of his officers—as to denouncing the government, that is a mistake, I condemn the incapable men who administer it.

Mr. Leech. Perhaps the gentleman expressed himself in that way. I was prepared to hear it said the executive department was composed of miserable and deceitful men; and the members of this house treated with equal contempt—and that it is a monstrous crime to be related to the secretary of the commonwealth. I know the gentleman (Mr. Duane) alluded to me as a relation of the secretary of the commonwealth—but that relationship is so remote that the gentlemen would not be able to trace it on the table of affinity, or to give it a name. But, sir, I would be proud to be related to that gentleman, whose virtues endear him to his country, and whose name will descend to posterity, when the memory of his calumniators will be buried in oblivion.

But the gentleman noticed another thing—he made an unwarrantable attempt yesterday to make an undue impression on this committee; he attempted to induce a belief that the resolutions were crammed down the throats of the grand committee, and that now they are to be crammed down in the house.

Mr. Duane. The gentleman is in error—I mentioned the committee and not the house.

Mr. Leech. He said something like it—I suppose he only said the committee.

He said that it was the effect of executive influence, that a certain pamphlet from the press of the government for certain purposes was distributed among the members. Now what is the fact? The fact is the grand committee had their first meeting on the 15th of December—they adjourned one week—On the 21st the gentleman asked for further time to make up his mind. At the end of them, and at thethird meeting the principles of the report were agreed on; and referred to a sub-committee. In another week the sub-committee reported and they were received by the grand committee. At this time some gentlemen did ask for time—but I believe the gentleman (Mr.

Duane,) was not one of the number. He said he had made up his mind and was prepared to vote on the question. Well, Mr. Chairman, how long is it since the report has been brought into the house? I believe more than two weeks: when they were brought in, notice was given by a gentleman that he would call them up on a particular day. When that day arrived, a gentleman (Mr. Thomsson) besought the house to grant a day or two more. It was granted to them; and now we are told they are to be crammed down the throats of the members. It is nearly two months since the subject was before the committee, and certainly the time necessary has been granted; and I hope this house, nor the public, will ever believe they were crammed down by executive influence—that they will not submit to be deceived by a thing of this kind.

But what is this pamphlet which has done so much mischief? The pamphlet is entitled "The case of the sloop Active," &c. This was published last summer, to do away improper impressions which had been made by a mutilated publication—under whose name shall I say? judge Peters?—or his son? No matter—the quarter was suspicious; and the fact of suppressing part of the testimony is conclusive proof of a wish to influence the public mind.

But to the question; and I shall be as brief as possible; believing that long speeches are not of much avail; where the minds of the members are made up; and as this has been more fully discussed than any subject heretofore.

The history of the facts is well known—and I shall just observe on one particular point. The first great point, and on which all depends—Whether the committee of appeals had the authority to reverse the facts, after the finding of the jury? If they had not that authority I think the question is settled; for the supremacy of the federal courts falls of course.

It is not pretended that congress had that authority, by the express declaration of the people; because it is not shown; but only as it said they possessed the sovereign power of making war and peace, that they had this incidentally. But before I go any further, I would remark that all the arguments of the gentleman yesterday, as well as his learned friend Dallas, only prove congress had that power by implication; their having the power of making peace and war—that the union had so decided. Now this forms no part of the point in question; nor never did. There is no question about the sloop Active—whether prize or no prize—whether the capture was legal or not—but a mere question of fact, who had captured this vessel? and that fact the jury determined.

It seems, sir, that there was more than one claimant, and the jury determined that the prize belonged to various persons—one got one fourth, and the other three fourths, &c. Now, sir, the gentleman from the city yesterday endeavored, to persuade the house, on going over the errors, that we were, now, more competent at this day, than the court were—I believe that none besides himself will believe that. Congress, before the declaration of independence, were mere agents sent by the colonies; and whatever they did was in the complete power of the colonies, to set up, to revise or reject. Whatever they did, their powers were derived from the colonies or states, not those pitiful, paltry things called state rights, derived from congress.

Mr. Duane. I said all the power was transferred from the people to the colonial government. I said so far as related to maritime jurisdiction the power was derived from congress.

Mr. Leech. Now, Mr. Chairman, I go further—that the authority of congress can't be shown, and the right of the state to do as she has done, is clear: and if the committee of appeals had not the right, every attempt of the federal court to enforce their decree is unconstitutional.

I can't agree with the gentleman that the committee of appeals were the best judges of state rights.

Mr. Duane. I did not say so.

Mr. Leech. I think the gentleman said so.

Mr. Duane. I should not have been right if I had said so.

Mr. Leech. I shall not trouble the committee any further; as I shall not quote books, which every gentleman may have in his hands. The documents have been before the public for years; I believe the committee of appeals usurped authority; and every attempt, from that day to this, to carry their decree into execution, has been unconstitutional.

Mr. Thompson. Mr. Chairman—I rise with some degree of disappointment, in as much as I anticipated having the pleasure of hearing this interesting subject examined with dispassionate deliberation—that every thing having a tendency to harrow up the angry passions, would have been avoided. But after hearing the furious, and permit me to add the *malignant* personalities of the gentleman from Fayette (Mr. Tarr), that pleasing expectation no longer inhabits my mind; it however affords me some consolation, when I recollect the conduct of the gentleman last session, when the case of William Nichols was before the house; he set out in the same strain, bordering on revolt against the union. I then gave my sentiments in opposition to his dangerous doctrines—and he with a candor at all times honorable, rose and acknowleged that he was wrong—that his mind was changed—that he would change his vote, and not sin against convic-

tion. Should I be as successful on the present occasion, I will consider the time well employed—for the next thing to not erring, is to acknowlege the error. When the gentleman to be sure last session declared in the public papers, that he was not an *expectant—not an applicant*—he best knows his desires now; as for myself I can truly declare, I have nothing to *expect*—nothing to fear—and when I so far descend from my legislative duty, as to prostrate myself before the executive for public bounty, for an act so dishonorable, so unworthy, may that people, who have confided in me as their representative, with indignation hurl me from their confidence.

The first enquiry that appears proper to make on these extraordinary resolutions, is, what is their object? is it the opinion of gentlemen that the executive is in such a tottering state as to require a legislative prop? Did not the governor declare in his message at the opening, that the subject was brought to a "*final issue*?" a subject that had for thirty years been a source of controversy, tortured and changed from court to court. Why not let it rest if brought to a *final issue?* No, sir, a grand committee must be appointed on a subject said to be settled; and what is still more strange, the resolutions are called *Olmstead's;* wonderful discovery—admirably named—the first is an attack on the judiciary of the United States; another approbating the government for calling out an armed force, to resist their legal and constituted authorities—and among the rest, have taken care not to forget themselves; for in fact, approving of the proceedings of the last legislature, is approving of our own conduct, trumpeting our own fame. The former constitution of Pennsylvania made provision for a *council of censors*—no such duty is assigned to us by the constitution we are now assembled under, and sworn to support; the sovereign people, in whose hand it ought to be, has retained that right, and to them will I bow with submission, if the governor's conduct will not be approved by them. No resolution that we can adopt will save him—it would also be more to our credit, more beneficial to the community, if in place of wasting our time in passing useless resolutions, we would attend to the numerous and pressing petitions of our constituents. Passing laws for the internal improvement of the state—improving a defective militia system—giving encouragement to domestic manufactures, and many other subjects of public utility. This, sir, would better comport with receiving three dollars a day for our service, than to be passing a string of resolutions which can do no good, but may do much evil.—In this sentiment, I presume I not only agree with that district of the state where they were so "*base*," that a number to resist a sergeant's guard could not be procured—but that I

express the general opinion of the good people throughout the state—but they have been forced on us and I will endeavor to state some of the reasons that operates on my mind to give them opposition. My worthy friend from the city, having done justice to the first resolution, relative to the judicial authority of the United States, will supercede the necessity of my saying much on that point.

The documents and testimony in the case of the sloop Active being printed and in the hands of the members—the decision of the United States court is declared illegal and unconstitutional. I beg gentlemen who are acting under oath will examine well the subject; have their minds satisfied of the truth of the charge before they give it their support. Judge Shippen, judge Yeates, chief justice M'Kean have declared—on the bench—that the United States court was the proper *disinterested* tribunal, where it ought to go for final decision. They have decided—and our present chief justice Tilghman,—a man whose virtues, wisdom and impartial justice endears to every honest man of every party, declared, on the bench, and on his oath, when Mrs. Seargent was brought before him, on the writ of habeas corpus, that "the decision was legal—was constitutional." The constitution of the United States declares, that the judicial power "shall extend to all cases of admirality and maritime jurisdiction." This is one of those cases; and here let it be for ever remembered, that the constitution transfering those powers to the United States courts was approved of by Pennsylvania. She elected her delegates, a convention the free choice of the people, examined the provisions—they ratified, they confirmed the invaluable instrument, and the man or men that would now arrest its operation with violence or force of arms is either too ingnorant, or two wicked to deserve the confidence of that people, for whose protection and happiness it was formed, and hitherto has realized every just and reasonable expectation.—When the constitution of the United States was submitted to the people for their consideration, then these objections, raised by the pretended advocates of *state rights*, could urge their opposition with propriety; and if it had been forced on them against the voice of the state there would be some ground to approbate a commander in chief for ordering a senator from his civil duties, assigned by his constituents, to repair to the seat of war, call forth his forces and inspire them to resist the tyranic states. Sir, this was not done; the representatives met, and in that same city, that is now pronounced an *ignorant mob*, by our modest secretary —they pronounced, with a large majority, to be the supreme law of the land—under it we this day assemble, sworn to support it inviolate.

The gentleman from Fayette (Mr. Tarr) has been somewhat strange in the subjects selected for abuse; the first was the congress of '76, followed up with the editor of the Aurora; the former he accuses of being regardless of their oaths, a set of tyrants and usurpers—depriving the several states of their rights; and the latter has been guilty of a dereliction of his political principles; both of which are equally destitute of truth. That worthy band of patriots, which composed the continental congress, and awarded justice to Gideon Olmstead, and brought our country triumphant through an arduous revolutionary war, and gave freedom, happiness, and independence to millions—will be esteemed and venerated, by every person that loves his country, when their defamers shall be looked on as monuments of contempt. They had, by the articles of confederation, the power of appointing courts of appeal *in all cases* to decide finally; they exercised them with honor to themselves and advantage to their country; and the moment the people resolved to distribute their powers, and transfer that part which was of a judicial nature, to the judicial branch, they yielded with pleasure—no resistance, not a murmur.

I trust, Mr. Chairman, it will not be supposed that I wish to be the advocate of the United States' judges; no, let them be watched with an eagle-eye—with the most scrutinizing attention—and if they dare exceed the limits prescribed by the constitution, punish them; but not with the bayonet—order out no military force; this is the law of tyrants, and ought to be *reprobated* instead of *approbated*, by every friend of rational liberty. The instrument, which we have sworn to support, provides the mode, and until the same authority (the people), that approved thus to punish, changes the manner of impeachment and of removal, it is our duty, it is the duty of every good citizen to conform to it; and when gentlemen appear to be so much alarmed about state rights, they ought to recollect that the representatives in congress, who have the power to impeach, are elected by the same voice that we are; and what ought to reconcile their fears, the senate, that tries, are the immediate choice of the state legislature. Is it not then idle and foolish in the extreme to be holding forth that the *judiciary will swallow up state rights?*

I will now proceed to a more novel part of the subject: the conduct of the present chief magistrate of this commonwealth in ordering out a military force to oppose the authority of the U. States—contrary to the constitution, which he was on oath to support, and the laws of the union as well as the state; which conduct we are now called on to approbate.

I will, however, before proceeding to this important subject, briefly notice, in order to show that no imputation of censure

ought to be attached to the courts of the United States for exercising the power, that the principle was very ably argued by the most eminent law characters in the union, in the case of Penhallow versus Doane—which occupied the court eleven days, at which time a full view of every principle embraced on the case of the sloop Active was examined; and the court taking time to consider, declared, that the continental court of appeals was correct, and that these decrees ought to be carried into effect—and that the United States courts, organized under the present constitution, had appellate jurisdiction and power to enforce obedience to the decrees. Their decision took place as far back as the year 1795. No objection has ever been made as to correctness of the decision. Not an attempt has ever been made by either the impeaching or trying branch of the national legislature; no complaint from a single state in the union. If gentlemen will turn to 3d Dallas, page 54, they will see this case fully, clearly and ably explained by judge Patterson, who then presided, who lived respected and esteemed as a virtuous, enlightened patriot, and died regretted as the able, impartial and upright judge—He thus expresses himself on that occasion, when speaking of the court of appeals in page 80:

"Much has been said respecting the powers of congress. On this part of the subject the council on both sides displayed great ingenuity, and erudition, and that too in a stile of eloquence equal to the magnitude of the question. The powers of congress were revolutionary in their nature, arising out of events, adequate to every national emergency, and co-extensive with the object to be attained. Congress was the general, supreme, and controuling council of the nation, the centre of union, the centre of force, and the sun of the political system. To determine what their powers were, we must enquire what powers they exercised. Congress raised armies, fitted out a navy, and prescribed rules for their government: congress conducted all military operations both by land and sea: congress emitted bills of credit, received and sent ambassadors, and made treaties: congress commissioned privateers to cruize against the enemy, directed what vessels should be liable to capture, and prescribed rules for the distribution of prizes. These high acts of sovereignty were submitted to, acquiesced in, and approved of, by the people of America. In congress were vested, because by congress were exercised with the approbation of the people, the rights and powers of war and peace. In every government, whether it consists of many states, or of a few, or whether it be of a federal or consolidated nature, there must be a supreme power or will; the rights of war and peace are component parts of this supremacy, and incidental thereto is the question of prize.

The question of prize grows out of the nature of the thing. If it be asked, in whom, during our revolutionary war, was lodged, and by whom was exercised this supreme authority? No one will hesitate for an answer. It was lodged in, and exercised by, congress; it was there, or no where; the states individually did not, and, with safety, could not exercise it. Disastrous would have been the issue of the contest, if the states, separately, had exercised the powers of war. For, in such case, there would have been as many supreme wills as there were states, and as many wars as there were wills. Happily, however, for America, this was not the case; there was but one war, and one sovereign will to conduct it. The danger being imminent, and common, it became necessary for the people or colonies to coalesce and act in concert, in order to divert, or break, the violence of the gathering storm; they accordingly grew into union, and formed one great political body, of which congress was the directing principle and soul. As to war and peace, and their necessary incidents, congress, by the unanimous voice of the people, exercised exclusive jurisdiction, and stood, like Jove, amidst the deities of old, paramount, and supreme. The truth is, that the states, individually, were not known nor recognized as sovereign, by foreign nations, nor are they now; the states collectively, under congress, as the connecting point, or head, were acknowleged by foreign powers as sovereign, particularly in that acceptation of the term, which is applicable to all great national concerns, and in the exercise of which other sovereigns would be more immediately interested; such, for instance, as the rights of war and peace, of making treaties, and sending and receiving ambassadors. Besides, every body must be amenable to the authority under which he acts. If he accept from congress a commission to cruize against the enemy, he must be responsible to them for his conduct. If, under colour of such commission, he had violated the law of nations, congress would have been called upon to make atonement and redress. The persons who exercise the right or authority of commissioning privateers, must, of course, have the right or authority of examining into the conduct of the officer acting under such commission, and of confirming or annulling his transactions and deeds. In the present case, the captain of the M'Clary obtained his commission from congress; under that commission he cruised on the high seas, and captured the Susanna; and for the legality of that capture, he must be responsible to congress, or their constituted authority. This results from the nature of the thing; and, besides, was expressly stipulated on the part of congress. The authority exercised by congress in granting commissions to privateers, was approved and ratified by the several colonies or states, be-

cause they received and filled up the commissions and bonds, and returned the latter to congress—New Hampshire did so, as well as the rest".

And again, page 86, when speaking of the powers of the district courts having jurisdiction to carry into execution the decree of the courts of appeal, he says, "on this point I entertain no doubts. Recurrence to facts will answer the question. The existence of the court of appeals terminated with the old government; this also was the case with the subordinate court of admiralty in the state of New-Hampshire. The property was not restored to the libellants, nor were they compensated in damages; of course the decree in their favor remains unsatisfied. They had no remedy at common law; they had none in equity; the only forum competent to give redress is the district court of New-Hampshire, because it has admiralty jurisdiction. There they applied, and, in my opinion, with great propriety.

"Judges may die, and courts be at an end; but justice still lives, and, though she may sleep for a while, will eventually awake, and must be satisfied.

"Having discussed the preliminary questions relative to jurisdiction, we shall now consider the proceedings in the circuit court of New-Hampshire. And here the first question is, whether by the death of Elisha Doane, before the judgment rendered in the court of appeals, that judgment is not avoided? The death of Doane does not appear on the record of the proceedings before the court of appeals: it is in evidence from the certificate of the judge of probates, which is annexed to the record transmitted from the circuit court of New-Hampshire. Many answers have been given to this question; some of which are cogent as well as plausible. On this subject, it will be sufficient to observe, that admitting the death of Doane, and that it can be taken notice of in this court, it is unavailing, because the proceedings in a court of admiralty, are *in rem*. The sentence of a court of admiralty, or of appeal in questions of prize, binds all the world, as to every thing contained in it, because all the world are parties to it. The sentence, so far as it goes, is conclusive to all persons." This reasoning, sir, needs no aid of mine.

But to the resolutions, approving armed force, opposed to the civil authority, in open violation of the express terms of the constitution, which declares, "that the military shall at all times be in strict subordination to the civil power." The law of 1803 is said to have provided for that unfortunate, that state degrading occurence; and I am willing to admit, that the governor from a want of understanding, did think, at the time, it was his duty thus to act. I am willing, sir, to impute the unjustifiable, unparalleled executive power to the head and not the heart. I

have no doubt, but according to the words of the governor in his message last session, on the subject, it was a "painful duty he was then about to perform;" and I have no doubt on my mind if he had the same view of the subject then, that he has now, the lessen of expense, the information given by the people, the respectful answer from president Madison, together with the light given during the trial of those unfortunate but worthy citizens that were the victims of this unwarrantable command; that he would not put the monstrous and dangerous construction on the act of April 1803—I defy the most ingenious advocates of executive patronage to point out a single sentence in that law giving power to call out the military force; not a sentence appropriating money to defray the expense; from which it evidently follows, no war measures were intended by the legislature; inasmuch as money has always been considered and called the *sinews* of war. And to strenghten and establish this opinion I refer gentlemen to a law, passed a few months before, relative to the disturbances of the Connecticut intruders; in that act the governor was directed to protect the *rights of the state;* but here the law did not stop. No, sir, the next section authorised and empowered the governor to call out a *portion* of the militia. Even here the law is not complete—the following and consistent section provides the means and makes the appropriations: in the law under which the governor acted, no such powers, no such provisions are contained; but I will go further, and say, if the law of 1803 authorised and expressly commanded the governor to call out a military force to resist the constituted authority of the United States, the law would be "extra-legislative, erroneous and void," and ought not to be obeyed by the executive. The governor of the state is not bound to see executed a law that is a manifest and wicked violation of the constitution, both of the state and of the United States; and in order to illustrate this opinion I will ask gentlemen, for it is contended by some that all laws must be executed, the governor has no choice: Suppose the legislature of Pennsylvania would pass a law declaring and ordering the governor to call out a detachment, march to the city of Philadelphia, and enter the vaults of the bank of the United States, carry off and deposit in the borough of Lancaster, at the seat of government, all the specie therein contained: is there a member on this floor so lost to common sense as to answer in the affirmative? No, I am sure there is not one; and I am free to declare, that the passage of such a law would not be more fatal to the rights and liberties of the people, nor so destructive to our happy form of government, as the power exercised by the present governor in the case of Olmstead; and which we are now called on to approve, in direct hostility to the following

words of the constitution: "no standing army shall be kept in time of peace without the consent of the legislature." Again, in the United States' constitution, art. 1, sect. 10, "no state shall without the consent of congress, keep troops or engage in war, unless actually invaded; or in such imminent danger as will not admit of delay." And in the sixth article, are these words: "This constitution, and the laws of the United States which shall be made in pursuance thereof, *shall be the supreme law of the land*, any thing in the constitution, *or laws* of *any state*, to the contrary notwithstanding." Here Mr. Chairman, is language too plain to be mistaken; and when I recollect that Mr. Snyder took a solemn oath to support it, I am almost constrained to say, *all ought* not to be attributed to the head, the heart must partake of a portion.—It has been said, that Mr. M'Kean gave his approbation to the law; true; but, in my opinion in no one of his many public acts, (and I admit he has done many good ones) has he appeared more incorrect than on this subject; after his declaration on the bench expressing a strong wish that it should go to the United States court for a final, disinterested decision. But no one will say that when he signed the law he admitted that it would warrant the construction of calling out an armed force. No, sir, he now reprobates and scouts the power exercised as madness, wickedness and infuriated ignorance; bordering on treason against the union. Nothing more than the civil power was ever intended; and as far as I have been able to ascertain, not a member that voted for the passage of the law entertained a different opinion. I, with a view to obtain every information on this extraordinary law, observing that the venerable member from the city (Mr. Odenheimer) had recorded his name on the journal of 1803, in favor of the law, put the following question to him: when you gave your assent to the passage of the law of 1803 relative to the sloop Active—giving the governor power to protect the just rights of the state—did you suppose you was giving power to the executive to call out an armed force, to make war against the union? he honestly and without hesitation answered me—No, *I did not*. My worthy friend, our late speaker, was then a member; he also declares the same. The gentleman from Fayette (Mr. Treavor) did vote for the law; he likewise declared the same. No such dangerous power was ever intended; he is now in hearing and will correct me if I mistake. I went further with my enquiries; I called last session on the governor, Simon Snyder, who was then speaker, and voted for the law; I asked him what was the opinion of the legislature when the law passed—was the subject investigated and it merits discussed? he answered, "*that it had escaped his memory, he had no recollection of the subject—that his memory was very*

treacherous; and so far he no doubt spoke the truth; this will tend to show that very little interest was given at the time; the consequences that have resulted were not considered.

Before I proceed to examine the features of the law, I will endeavor briefly to account for its passage, and that by a large majority. This law, Mr. Chairman, was passed a few months after Thomas M'Kean was hailed to the executive trust of Pennsylvania with a majority of 30,000 votes; he not only enjoyed the confidence of the people, but also the confidence of a great portion of the members of the legislature; his legal knowlege was admitted to rank high among the law characters of the state. Judge Peters, about that time, in the district court, on the long pending case of the sloop Active, made some observations, when he gave his opinion, that roused the passions of Mr. M'Kean, as appears by his message, communicated a few days afterwards to the legislature, to be found on page 244 of the journal for 1802–3, wherein he expresses his surprise at the "*strained construction*" of the judge, in converting the treasurer (Mr. Rittenhouse) into a "*stake holder;*" as he most certainly was, from every fact that has been disclosed on the subject; he never would agree to pay the money over to the state, until it was finally decided to whom it belonged; and the governor after saying some smart things, concludes his message, by "conceiving it to be his duty to lay the affair before the legislature for *advice and direction;*" not to be authorised to call out an armed force—and in the place of giving *advice and direction*, a law was *Coopered** up, with a long tail or preamble (the preamble is 9 pages,) to operate as a *scare-crow*, with its *frightful tail*, to the United States; and as there was full confidence in Mr. M'Kean, they gave him unlimited power to use *any means and measures that he may deem necessary for the purpose*—this unlimited power in the hands of the commander in chief, Thomas M'Kean, was to intimidate, to arrest, and prostrate the judicial and constitutional authorities of the union; (and indeed while he was commander in chief it had the desired effect;) but this proceeded more from an indulgent forbearance, not wishing to embroil the government in a controversy of so unpleasant and destructive tendency. Judge Peters, hoping a subsequent legislature would see the absurdity of the law, and make provision to bring the affair to a *final issue*—for no person in his senses would for a moment believe that the president of the United States, sworn to see carried into effect the decrees and authorities of the union, would suffer the wheels of government to stop, and the whole system of our happy form of government to tumble into ruin and confusion. Justice may

* Judge Cooper, it is believed, framed the bill.

sleep for a time, but she will awaken invigorated and resolved to be satisfied.

Let me now call your attention to the law of 1803, this state degrading statute--mammoth of absurdity—its very existence is a burlesque on the name of representative government—and those who were instrumental in its passage, giving the executive of a free state, unlimited power to exercise uncontrouled, such means as he may deem necessary. (Here Mr. Thompson read the section.) Here it is contended is the *sweeping power* that is to justify the *war measures*, but to that doctrine I will never accede; if a legislature will so far *sport* with the peoples rights, as to give a governor power to do any act he deems necessary: the abuse of that power is at his peril—the governor dare not, he ought not with impunity, do an *unlawful act;* the constitution of the United States, and the laws made in pursuance thereof, are the *supreme law of the land;* and any deed in violation thereof, is a crime for which all are accountable, any law of the state to the contrary (or power granted) notwithstanding. If, then, I can clearly demonstrate, by the plain letter and spirit of the constitutions of this and of the United States, which Mr. Snyder in the presence of many of this committee, on the sacred volume, swore to support. This, I trust, will be a sufficient reason on my part, for voting against the resolution of approbation--and in order to show that the present governor did not understand the law at the time he commanded general Bright to abandon senatorial duties, *gird on the sword*, and repair to the scene of battle--call out your forces, and let your glittering bayonets be presented to the breasts of those who dare enforce the authority of the union of our common country. And be it remembered, that this was previous to general Bright's appointment of inspector of flour for the port of Philadelphia. In his message he says, "I am now making arrangements to call out a portion of the militia, that being the *only* means in the power of the executive." I beg gentlemen to attend to this expression, *the only means*, as I will presently show there was other means, and that he made use of them, as appears by his communication to the present legislature.

A letter from Mr. Boileau, secretary, which of course must be an official document, to the attorney general, says, "I have just had a conversation with the governor, and he has authorised me to direct you, that in case the ladies were arrested, you should immediately make application to the chief justice in their behalf, to have them liberated on the *habeas corpus*—and if you should succeed, then it is hoped that the *just rights of the state will still be preserved;*" and "that you shall employ counsel to assist you if you think proper." Here, then, was other means,

to the contrary of what the governor communicated notwithstanding; this I admit was a proper, lawful and constitutional means, and such as ought to have been substituted in the place of armed force; and thereby preserved the dignified and respectable state of Pennsylvania from disgrace, her executive from the ridicule of the union, and his feelings from the lacerations contained in the answer from the president on that unfortunate subject. This, sir, is the means that, I presume, Thomas M'Kean would have exercised, had the subject been urged on an execution ordered during his administration; the civil power and not the bayonet—unless indeed he was prepared to imbrue our hands in the blood of our fellow-citizens, who assisted to raise the fair fabrick—the only government on earth where our fellow man is not a slave; but should the sword be the umpire to decide between state and state, short will be the time Americans can boast of freedom, of their happy form of government, of equal laws and personal protection in their rights and republican form of government, guaranteed by the constitution.—"But here we may be pressed with the final question: What if the state is resolved to oppose the execution of the authority of the union? This would be an awful question indeed! he, to whose lot it should fall to solve it, would be impelled to invoke the god of wisdom to illuminate his decision. I will not believe that he would recal the tremendous examples of vengeance which in past days have been inflicted by those who claim, against those who violate authority. I will not believe that in the wide and gloomy theatre, over which his eye should roll, he might perchance catch a distant glimpse of the federal arm uplifted! Scenes like these are too full of horror not to agitate, not to rack the imagination. The argument requires no more to be said; it surely does not require us to dwell on such painful possibilities: rather let me hope and pray that not a single star in the American constellation will ever suffer its lustre to be diminished by hostility against the sentence of a court, which itself has adopted." Who would have conjectured at the time this language was held forth, by a worthy patriot and advocate for the rights of the people, that the frightful, the desolating scene would so soon be realized in the republican state of Pennsylvania? whose first word in the motto of her arms is *virtue*! and all this under the law of 1803, in which there is not a single word about military force—not a cent appropriated to defray the expense! How then could he proceed to such unlawful *means*—while the constitution declares, no money shall be drawn from the treasury, but in consequence of appropriation by law!" no standing army shall, in time of peace, be kept up without the *consent of the legislature*; and the militia shall at all times be in

strict subordination to the civil power. The constitution of the United States, which I think ought to have some weight in Pennsylvania, notwithstanding it is contended she is a *sovereign state*, declares thus—"no state shall, without the consent of congress, keep troops in time of peace; or engage in war unless actually invaded; or in such imminent danger as will not admit of delay." Again; "congress shall have power to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions."—With a guide so plain, and legislative power so indefinite and vague as the act of 1803, it is supposing too much to attribute all to the head.—But we have been asked, what other measures could the governor pursue, other than call out a military force? He has informed the house of other measures. I will also state others: in the place of saying, "Gen. Bright, I, Simon Snyder, reposing confidence in you do authorize and require you, immediately to have in readiness such a portion of the militia," &c. he should immediately have informed the house this: "gentlemen of the house of representatives, I find on the statutes of Pennsylvania a law declaring that it is the duty of the executive to protect the just rights of the state, the persons and properties of Elizabeth Sergeant, and Ester Waters; but it neither points out the manner to protect nor does it provide the means—if it contemplates war against the United States, I must be empowered to call out troops; 2d money (the sinews of war) to pay them, neither of which essential powers is contained in this singular act; and not wishing to take the responsibilities of this important and highly interesting prerogative, therefore lay it before you for explanation *direction and advice*" (as his predecessor did.) This, Mr. Chairman, is the means that a *wise and prudent* executive should have acted; but the first information commnnicated to the legislature by the governor was, that "I am now making arrangements to call out a portion of the militia;" he had then decided on the last argument of kings—the bayonet! he had then put the construction on the law—and as appears by the journal of the last session, page 534, (which I wish every citizen of Pennsylvania was in possession of) gen. Bright's *orders* was then made out, and he was then preparing to retire from the senate, and on the following morning set out for Philadelphia, with orders dated the 27th February, the very day on which the secretary delivered to the house the first message on the subject—did this look like a disposition on the part of the governor to await the direction and wisdom of the legislature? no, sir, it looks like nothing of that nature; but he resolves to be commander in chief—to exercise the *unlimited powers* given by the law, regardless of their being unlawful—unconstitutional; the gentleman from Fayette (Mr. Tarr) took occasion to furnish

the house with an armful of old newspapers, and endeavored to lengthen out his arguments (if they deserve the name); I hope it will not be thought intrusion on my part if I read an extract from part of a paper containing the luminous opinion of judge Tilghman on the subject.

Mr. Tarr. Will the gentleman please to give us the date?

Mr. Thompson. O, yes, I will give you the whole of it directly; the part to which I will now call the attention of the committee, is in reply to the *preliminary* question brought forward by the counsel of Olmstead, "whether the judgment would discharge the prisoner if he was *clearly* of opinion that *the district court had no jurisdiction?*"

"I am aware of the magnitude of this question, and have given it the consideration it deserves. My opinion is, with great deference to those who may entertain different sentiments, that in the case supposed, I should have a right and it would be my duty to discharge the prisoner. This right flows from the nature of our federal constitution, which leaves to the several states absolute supremacy, in all cases in which it is not yielded to the United States. This sufficiently appears from the general scope and spirit of the instrument.

"The United States have no power, legislative or judicial, except what is derived from the constitution. When these powers are clearly exceeded, the independence of the states, and the peace of the union demands that the state courts should, in cases brought properly before them, give redress. There is no law which forbids it, their oath of office exacts it and if they do not, what course is to be taken? We must be reduced to the miserable extremity of opposing force to force, and arraying citizens against citizens; for it is vain to expect that the states will submit to manifest and flagrant usurpations of power by the United States, if (which God forbid) they should ever attempt them. If congress should pass a bill of attainder, or lay a tax or duty on articles exported from any state (from both which powers they are expressly excluded) such laws would be null and void, and all persons who acted under them would be subject to actions in the state courts. If a court of the United States should enter judgment against a state which refused to appear, in an action brought against it by a citizen of another state, or of a foreign state, such judgment would be void and all persons who acted under it would be trespassers. These cases appear so plain that they will hardly be disputed; it is only in considering doubtful cases, that our minds feel a difficulty in deciding; but, if in the plainest case which can be conceived, the state courts may declare a judgment to be void, the principle is established. But while I assert the power of state courts, I am deeply sensible

of the necessity of exercising it with the greatest discretion. Woe to that judge who rashly or wantonly attempts to arrest the authority of the United States; let him reflect again and again, before he declares that a law or a judgment have no validity. The counsel for Mrs. Sergeant have, with great candor and propriety admitted, that when there is a reasonable cause for doubt, that doubt should be decisive, in favor of the judgment in question. The same principle has been adopted by the judges of the supreme court of the United States, and of our own state, when questions concerning the validity of laws, have come before them; and it has my hearty approbation."

This, Mr. Chairman, is the reasoning and decision that governor Snyder ought to have given to the law of 1803; he ought to have pronounced it unconstitutional, *extra legislative, erroneous and void;* this course would have done honor to his head and *heart*, and proved him qualified to fulfil the high trust and confidence reposed in him; this would have corresponded with the expression of the last house of representatives, on war measures, on resisting the United States at all hazards. Let gentlemen who are for approbating this bloody resistance, on the part of the *office-giving* executive, turn to the journals of the late house, page 696, where a resolution was offered, "that the state of Pennsylvania will resist the execution of the decree of the court of the United States, in the case of Gideon Olmstead, against Elizabeth Seargeant, and Esther Waters, *at every hazard*"—every member in the house with merited indignation recorded their names against this wicked *(but spirited)* resolution—except one (Mr. O'Brien) who gave his vote in the affirmative—out of *contemptuous derision* to the disgraceful subject. This expression of the representatives of the people took place the 16th of March, eleven days before the date of general Bright's letter to the secretary, informing, "that when he last wrote he had no idea the marshall would have attempted to execute his writ; but this day (March 25) he came with his officers in due form—which was resisted by the guard at the point of the bayonet," and the marshall not being disposed to risk at all hazards—saved himself and his officers in due form from being now numbered with the dead!—no person who knows general Bright will believe he would abandon the part he had taken, but with the loss of life. I have served under him as legionary officer with satisfaction and pleasure; and firmly believe no man would turn out in the defence of his country (which is the United States) with more freedom—the same good opinion will also apply to the detachment then assembled; they are members of the republican legion of Philadelphia; volunteers of numerous and respectable corps, who, as faithful but mistaken soldiers,

considered it their duty inviolably to obey all orders of their superior officers, without being permitted to exercise their understanding whether it was unlawful or not. And here let it be known, and to these men I mention it, that as a proof of their love of country,—to defend the rights of that government, under which they were enjoying the blessings of liberty—they, sir, at the time our country was threatened by the foreign foe, they, like true Americans, rallied round the standard of the union—they offered their services, without a call, to the president of the United States; their names are now enrolled in the war office at Washington tendering their services—pledging their lives and properties in defence of the union. And from their commander in chief (the president of the United States) they have been complimented for so worthy an act—they, Mr. Chairman, like the governor, have mistaken their duty—a jury of their countrymen and friends, have declared on their oaths that they were wrong, and here let it be remembered, that a portion of the jury was of the "particular sect," known as the exclusive friends of Simon Snyder and democracy; among the names I find William Sharswood, Liberty Brown, John Jennings &c. one of whom held the distinguished situation of secretary of "the friends of the people." Not a single man of the twelve could be found to say they were not guilty; conscience, that unerring monitor whispered to their friendly minds, in a language too powerful to resist—they were bound, as we are, (on the sacred volume,) in the presence of the searcher of all hearts—personal feelings gave way to justice—redress to the violated laws of their country—to public duty—and like honest citizens gave the verdict as to them appeared justified by the testimony adduced on the trial—But it has been said they gave a special verdict. True; and what does that prove? if it has any force it must be to the credit of the United States court. It proves a confidence in the court—inasmuch as the jury have a right to judge of both the law and the fact; if then, after the fact was established to the unanimous approbation of the jury, they, confiding in the wisdom and justice of the court, surrendered to them a portion of their constitutional right to judge of the law, it ought then to be considered the full, free and complete act of the jury. Thus were well meaning, but mistaken men, acting under the orders of the governor, declared guilty, by a unanimous voice of a jury of their fellow-citizens. And in like manner is the great voice of the nation, from every state in the union that we have heard from, proclaiming that the governor of the state of Pennsylvania is also guilty. And, sir, I have too high an opinion of the virtue and patriotism of the people of Pennsylvania to doubt for a moment but a corresponding verdict will also be pronounced by

them, so soon as they are in possession of the testimony on the subject.

Pennsylvania, hitherto distinguished for her attachment to the general government—the zealous advocate of liberty, and a government of laws—viewed as the key-stone of the national arch, she will not—her sons, when correctly informed, will never approve measures in their very nature calculated to demolish and lay prostrate, in total ruin, the fair fabric erected at the expense of immense blood and treasure. If Pennsylvania has the right thus to resist at the point of the bayonet, Massachusetts has as good a right in the same manner to resist the laws of congress: the embargo, or any other subject that may operate against their interests or dispositions; every state from Georgia to New Hampshire may, with equal propriety, declare the judicial decrees of the United States' courts, or the legislative acts of congress, erroneous and void, under the captivating sounds of state rights—state sovereignty! Should this delusive rage unfortunately be the order of the day, the oldest man now in my hearing may out-live the only happy and free government on earth; may live to mourn over the ruins and dissolution of a form of government, the admiration of the wise and good of all nations. Let me then, representatives of Pennsylvania, entreat you to pause and reflect; ask yourselves, upon the oath you a few days ago subscribed to at the table of this house—Can you on that oath declare, the contents of all the resolutions to be correct and true? Would you be willing to go before a magistrate and attest to the truth thereof, that "the decrees of the United States' courts was *illegal and unconstitutional?*" Can you declare that the powers the governor exercised, in resisting by force of arms said decree, was legal, was constitutional? If you are not thus prepared, hesitate before you record your names in favor of a principle so dangerous, so destructive; a vote that will cause your offspring, and future generations to turn to the journals of Pennsylvania, and view the unaccountable proceedings with astonishment.

But further to establish the propriety of proceeding with caution, let me here introduce another extract from the opinion of the impartial chief justice of Pennsylvania:

"Having disposed of the preliminary questions, I will now consider the point of jurisdiction—If the district court had no jurisdiction, it must either be, on account of the subject of the suit, or the persons who were parties—I will examine them seperately. The subject is a matter of prize, which arose before the adoption of the present constitution—By the 2d section of the 3d article of the constitution, the judicial power of the United States, extends, "to all cases of admiralty, and maritime jurisdiction." The expressions comprehended all cases which

had arisen, or which *should* arise—and it was no doubt, the intention to comprehend them: because otherwise, all antecedent cases would have been left unprovided for.—I believe this construction has universally prevailed, nor has it been questioned in the course of the argument in the case. It appears then, the *subject* of the libel, is directly within the jurisdiction of the court, being a matter of *admiralty* jurisdiction. It is unnecessary for me to give any opinion concerning the right of the old court of appeals to reverse the decision of juries, contrary to the provisions of the act of assembly of Pennsylvania, under which the state court of admiralty was instituted. That is the point which occasioned so much jealousy and heart-burning, between several of the states and the old congress; it divided the opinions of many men of unquestionable talents and integrity, and certainly was a question of no small difficulty. But the state of Pennsylvania having ratified the present constitution, did thereby virtually invest the courts of the United States with power to decide this controversy. They have decided it, and being clearly within their jurisdiction, I am not at liberty to consider it as now open to discussion. The supreme court of the United States, has more than once decided, that the old court of appeals had the power to reverse the verdicts of juries, notwithstanding the law of any state to the contrary. From the establishment of this principle, it irresistably results, that Gideon Olmstead and his associates, were entitled to the whole proceeds of the Active and her cargo, and may pursue them into whatever hands they have fallen, unless indeed they have fallen into the hands of persons not subject to an action in the courts of the United States. This leads me to the question concerning the *parties* to the suit, the only question which has appeared to me to be of real difficulty, and which I was pleased to hear argued with great force and candor by the counsel for Mrs. Sergeant. It is declared by the 11th article of the amendments of the constitution, that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced, or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of a foreign state." The record in this case shows a suit between citizens of Connecticut and citizens of Pennsylvania. It is therefore not within the words of the amendment. But it is contended, that although not within the words, it is within the spirit, because the suit is brought against persons, representing an officer of the state, who received the property in question for the *use* of the state. There is weight in the observation, that the inconvenience would be very great, if the plaintiff in any action might by an *evasion*, by substituting the *officer* of the state, compell the state to aban-

don its property, or contest it, in the courts of the United States. In a case so circumstanced, the argument would be very powerful against the jurisdiction of the federal courts. But I cannot say, judging from the facts judicially disclosed to me (which are all that I can judge from) that the present case is so circumstanced. The certificates were certainly paid to Mr. Rittenhouse, as treasurer of the state. But it is equally certain, that neither he, nor his representatives since his death, did deposit them in the treasury of Pennsylvania: on the contrary, they were invested by him in a new fund in his own name, and it appears by his written memorandum, that he did not consider them as the property of the state, but his own property, until the state should give him a certain indemnification, which was never given. If this evidence is not strong enough, to shew that the certificates and money were not in the *possession* of the state, it requires an additional strength difficult to resist, from the circumstance stated in the answer of Elizabeth Sergeant and Esther Waters, "that they had *refused* to *deliver* them to the *treasurer* of the state, although expressly required so to do." Whether the conduct of Mr. Rittenhouse and his executrixes was right or wrong, is not the point now to be enquired into—The fact is, that they did *withhold* the certificates and interest money from the treasury, until after the final decree of the district court. Their paying it afterwards, cannot affect the question of jurisdiction. How then does the case stand? the *property* of those certificates and interest money, was irrevocably vested in Olmstead, &c. by the decree of the former court of appeals, which the supreme court of the United States, since the adoption of the present constitution, has decided to be conclusive. The possession was not in the state, and the suit was not brought against the state or any of its officers. I do not see then how it can be maintained, even under a liberal construction of the 11th article of the amendments, that the *state* was a *party* to the suit, in the district court—several acts and resolutions of the legislature of Pennsylvania were read in the course of the argument, concerning which I am now called upon to decide—I exercise the right in common with my fellow citizens, of speaking my sentiments, on political occurrences in private conversation, but it would ill become me on *this occasion*, to express any opinion concerning the policy which the state thought proper to pursue. Whatever they have done, I extend to them the same charity which I ask for myself, the belief that they had acted from *pure motives*. But although I say nothing concerning the policy of the government, I may be allowed, without impropriety, to express my anxious hope, that this long continued controversy will be brought to a termination, without any

material interruption of that harmony between this state and the United States, so essential to the prosperity of both."

Fortunate, sir, for Pennsylvania she had such a man at the head of the judicial branch. This temperate, but firm decision, arrested that dangerous and turbulent spirit that was waging war against our common country, that would have stained with blood the streets of Philadelphia. It gave relief to the minds of the citizens, and averted the interruption of that harmony between this state and the United States, so essential to the prosperity of both.

We are told, Mr. Chairman, that this subject was suffered to sleep in the United States courts, with a view to injure the present governor; that during the administration of Mr. M'Kean, the suit was not pressed—this is not the fact—without hesitation I pronounce it unfounded—and fortunately, I am well prepared to remove the groundless imputation. As the very reverse was the cause of delay, it would have afforded Mr. Snyder an opportunity of acquiring much credit, and triumphed over the errors of his predecessor. Mr. Olmstead suspended pressing a peremptory mandamus, until Mr. Snyder was elected governor, in as much as he entertained little hopes of success through the interposition of Mr. M'Kean, as he had manifested an unfriendly disposition, and favored the passage of the law of 1803.

Here, permit me, to mention an important circumstance to illustrate and establish my position. Immediately after Mr. Snyder entered on the duties of chief magistrate, Gideon Olmstead transmitted to him a full statement of the case, with a request that he would take the same into consideration, and submit it to the legislature in such a way as would appear to him just and right: that he had applied to the supreme court of the United States for a mandamus, but would not proceed to enforce the decree, until an opportunity was afforded to adjust the long pending controversy, as he did not wish to create difficulties between the general and state government, at a time too, when we were menaced by a foreign insidious foe. But, sir, this magnanimus and friendly conduct was treated with indiference; after keeping the statement and documents in his possession two weeks, he returned them, declaring that he would take no steps on the subject. This fact, I state of my own knowlege; I received them from his hand with the foregoing reply. I have heard Mr. Olmstead declare, after the election of the present governor, that he had hopes of obtaining his just dues, which he had pursued for near thirty years without success—that "during Mr. M'Kean's time, he had little hopes; but now, that we have got in our *honest farmer and republican governor*, in the place of a lawyer, he had great hopes of obtaining justice."

These are his words, and this was the reason the subject was not pressed—but unfortunately for the republican state of Pennsylvania his expectations were not realized; and from every occurrence that has come to my knowlege, this persecuted officer of our revolution, who was bleeding for his country, when some of his calumniators was unknown, has at all times manifested the highest respect for Pennsylvania, he has made numerous efforts to avert the degrading measures that has been pursued, and thereby preserve that harmony so desirable to the prosperity of both. He comes forward to the legislature three years ago to seek redress, the journals of that session bear honorable testimony of his worth, notwithstanding a certain editor, a bird of passage, whom few know, and less respect, has basely calumniated his character. The committee on claims to whom his petition was referred, reported in favor—page 128, journal 1806–7, in the following language: "they conceive Gideon Olmstead to be a brave man, and patriotic citizen; active in the "*times which tried men's souls*," and that the meritorous services which he rendered his country in her most difficult and trying times, is truly deserving the acknowlegment of the legislature."

Mr. Franklin, the present attorney general, was at that time exerting himself in favor of Olmstead—I received a letter from him recommending his claim, and the petitioner to be a meritorious character, who had been in pursuit of justice for thirty years, that he was entitled to legislative attention, and requesting my attention to his application and documents. The good opinion and confidence I placed in Mr. Franklin, at that time, (for he was then enlisted under the banners of democracy, nor did I then know that he had ever been contending under any other standard) induced me to turn my attention to this intricate and long pending subject—and on a faithful examination of the documents with due reflection, resulted in a conviction on my mind, that the claim of Olmstead was just; and since that time my opinion has never been changed—and every measure taken on the part of the state to keep him out of his rights, are highly improper, and therefore cannot receive my approbation.

I will, now, Mr. Chairman, proceed briefly to notice the correspondence from head quarters, and rapidly pass in review some of the most prominent features of those singular *bulletins*, in order to demonstrate, that ignorance and hatred to a *particular sect* combined to invigorate the executive to carry on the war that he had unlawfully waged against the United States. I am, however, willing to give the governor some credit for suppressing and keeping out of the document the letter of Mr. Boileau, in answer to general Bright's of the 25th of March—and if it was not for some expressions in the one he substituted, such

as hourly expecting an aswer from the president on the 29th of March, to a letter wrote the 7th of April. I say, sir, if it had not been for this oversight, we would never have obtained a copy of the *private* letter which will *not* "crown the author with never fading laurels." In that letter he assures the general that the governor is highly pleased with the defence against the union—and in this *private* letter he further assures him, that the men shall be well renumerated for their services, and be protected against any suits that may be instituted against them. Whether he made his promise good, let the unfortunate men, who followed his delusive advice and was released from the prison through the pardoning power of the president give the answer. After giving these assurances, he attempts the prophet—for, says Mr. Boileu, "*I am confident that Dallas dare not attempt what he has threatened!*" but that his prophecy was false a few days verified, and I trust it will be a warning to him in future not to attempt *inspiration*—Again, in the goodness of his heart he adds, "I have no idea that the sovereignty of the state should be prostrated by an ignorant mob in the city of Philadelphia, and if they are mad enough to interfere and sustain personal injury, it will be *their own seeking*."

Here, sir, is the humane and friendly language of a public officer receiving 2000 dollars per annum to the first city in the union, famed in every quarter of the globe for good order, moral and peaceable deportment and hospitality, ever ready to sustain the rights of the country, and an equal willingness to afford relief to the distressed—and I will venture to say, that no part of the state has done more to elevate the man that made him secretary than Philadelphia: when they were polling their thousands of votes for Simon Snyder, not a word about "ignorant mob." O! human nature, how depraved, how treacherous, how inconsistent; no Pennsylvanian who feels for the honor of the state, can read these documents without shewing a contemptuous blush for the unparallelled degradation. [Here Mr. Thompson read a number of extracts from the documents, in order to exhibit their mischievous tendency and inconsistency.] I cannot, (said he) help observing, that as some of the letters had the signature without attaching the office, and therefore must be *private*, according to a recent discovery, I will not dwell on their contents, nor will I go into an enquiry whether the secretary, *a civil officer*, was the proper person to transmit the dispatches of a commander in chief from "*head quarters*."—perhaps in the hurry of business in preparing to meet the foe, he forgot to appoint an aid-de-camp to perform that duty. A few words on the resolution approbating the conduct of the president for pardoning the men—no person was more gratified than myself when these men obtained

their pardon, and while I feel every disposition to approbate his conduct, I am certain no member of this committee will vote in favor of the resolution, unless they mean to insult, to ridicule that worthy and great statesman. No person who entertains the least respect for him will favor the the passage of the resolution, which declares "that we approve of releasing from a sentence, that was unjust and unconstitutional." Let gentlemen recollect, that Mr. Madison, in his answer to the governor, declared that he would in defiance of the military force of Pennsylvania, carry that decree into execution "*where any opposition is made*"—which this resolution declares to be unjust and unconstitutional. Wonderful compliment—pitiful subterfuge. It has been contended, that the president is opposed to the proceedings of the United States, and that the pardon granted was a proof of it; I deny the allegation, it is a base libel on the character of James Madison, as his answer to Mr. Snyder fully verifies. Is it not known that application was made to him by the attorney general of Pennsylvania, after entering a nol. pros.? would he have refused had he considered the decree unjust and unconstitutional? surely not—He suffered the trial to go on, to shew these mistaken men their error, in obeying the unlawful and dangerous orders of the executive, and also teach the executive not only of Pennsylvania, but Massachusetts, that the authority of the union shall not be opposed with impunity—and it will no doubt be a useful lesson, and of infinite advantage in the preservation of the union; reserving to himself the constitutional power of granting a free pardon on conviction, pursuing the same principles that was observed by president Washington towards the citizens concerned in the western insurrection, many of whom supposed, it was impossible that the United States could march a force over the mountains to enforce the laws of the land. But notwithstanding tranquility was restored, and the chiefs acknowleging their guilt, that they had committed a "political sin in attempting to stop the wheels of the government"—this did not arrest the march of the troops of the union, they were marched to the fields, where these deluded, and some of them honest men had assembled in hostile array against the laws of the United States, to convince them that they could, and would command obedience to the authority of the union, and thereby secure the future tranquility of the states.

This, sir, was the motive, by which the president was actuated; and the language contained in the pardon, justifies the conclusion—the words of the president are—"I James Madison, believing that you acted from a mistaken sense of duty, rather than from a *spirit of disobedience to the authority and laws of the United States.*" Here, Mr. Chairman, is the reason for extend-

ing mercy; not because it was an unjust and *unconstitutional sentence.* This, I hope, will be sufficient to satisfy gentlemen how far the president approved of Mr. Snyder's new method of defending *state rights*; and on no occasion could the pardoning power be exercised with more propriety. General Bright ranked among the most respectable citizens, had the confidence of people who a few months before elected him senator of the first district. Every interest was made to insure the constitutional interposition of the president; general Leib was among the first to urge the pardon, the moment sentence was pronounced—he prepared the application—I remember well the impressive letter he wrote to the president, stating the result, and situation of the case—he hastened it to the capitol, and as quick as the wind, a pardon arrived—and they were restored to their families: and thus ended the melancholy catastrophe that has placed a stain on Pennsylvania that years will not efface. But on reflecting on the degrading measure, it must afford the highest gratification to see the laws of our country triumph over military force arrayed against them; and the happiness and prosperity of the nation preserved; that the subject has again been raked up is a matter of extreme regret, but it has been forced upon the house, and I freely meet it; and with as much freedom will record my vote against every mode of approbating measures so dangerous, so hostile to the welfare of the people, as has been pursued by the executive of Pennsylvania in the case of Olmstead

I shall now close my observations on this inexhaustable subject, with returning my thanks to the committee for their indulgent attention, reserving the further right to reply to any remark that may be made in justification of executive measures, which, if they had terminated in success, must have destroyed the union—the great parent and protector of the state government. But thanks to that Providence, who has hitherto extended to this favorite land a great national blessing, that the desolating spark was timely extinguished—the country saved from a civil war—and America yet free.

Mr. Spangler. I hope Mr. Speaker, the house will adjourn and meet again at four o'clock. There is a number of gentlemen to speak yet, and some very short speeches of three or four hours long—I hope we shall agree to meet at four o'clock.

Mr. Brown (of Greene.) I hope the gentleman will go on and finish what he has to say to-day, and that then the gentleman from the city will go on and take up the time of to-morrow. I hope the house will not adjourn; but that they will wait patiently to hear them out, so that we may have the whole together.

Mr. Thompson. My humble thanks to the gentleman from Greene—if, however, the committee are disposed to continue

the sitting I will proceed; although I may not have a member in the committe who is so zealous in the cause, that he could smile at seeing the arrow of poison entering the parent breast and rise with indignation to prevent the offspring from extracting the venom. If I have such an advocate, I hope his reason will so far controul his passions, as to prevent him from exposing the depravity of his heart.

Mr. Duane. In the remarks, Mr. Chairman, which I had yesterday the honor to offer, I confined myself to the first resolution. What I have now to say may be in some measure a repetition of what I then said, but the reiteration is necessary in consequence of the pertinacity with which error is adhered to. I shall still confine myself to the first resolution, as the discussion of the remainder at this time might distract the attention of the committee.

The question, sir, depends upon the extent of the powers of the congress of 1776, and if I can shew that their powers were not restricted, it will follow that Pennsylvania has throughout been upholding a groundless claim. It will be admitted, sir, I presume, that the people of the colonies in 1775, had a right to sustain colonial assemblies, and that in a state of revolution those could not have conducted the affairs of the whole people. Their incompetency created the necessity for a national assembly, and that assembly was formed by express delegation from the colonies.

Now, sir, let me ask, were the colonies, or any of them, when they sent delegates to congress, or at any time whatever, *independent* in the strict sense of the word? were they sovereign states, absolutely independent of and unconnected with each other? if they were not, as I say they were not, what was their situation? colonies in a state of revolution and nothing else.

The people, and the people alone, gave being to the congress; not the people of one or a few of the colonies, but the people of the whole. Can it be supposed, then, that congress was a mere committee of correspondence, a mere council dependent upon the instructions of the colonial assemblies? Sir, the whole history of the revolution answers the question: congress exercised all its powers according to its own wisdom, the people delegated those powers, and their assent to the various exercise of them gave the stamp of supreme authority to the whole.

In a state of revolution, with an enemy within and without, 'twould have been madness to have attempted to form a written constitution; the liberties of America were to be atchieved, the enemy were to be beaten, and experience proved that the people took the readiest and most effectual method to accomplish both

objects. They established, on the strongest of all foundations, their own will, a national council for all national purposes, they supported its measures, and proved that the congress of '76 was not composed of usurpers, as we are at this day told it was. If gentlemen can shew to the contrary, I pray them to do so by adducing evidence; let them shew this committee in what instances the people denied the legality of the measures of congress.

It is absurd, sir, to talk of state sovereignty, as it is now talked of; there never was, there is not, any such thing as one of the states being independent, in national affairs, of the rest. If during the revolution, a state might refuse to adhere to the measures of congress in relation to maritime jurisdiction, might it not have refused in every other case? can it be supposed, that the colonies had a right to say—"I will consent to this—I oppose that"—Sir, if such distraction had prevailed, you would not now be sitting in the chair of the representative chamber of Pennsylvania, we should not now have the freedom to discuss any question whatever.

But, gentlemen say, congress merely recommended admiralty courts; let me ask in what instance any colony attempted to erect, or did erect, an admiralty court, prior to the recommendation? were not such courts necessary, and as they were, why were they not formed if the colonies had a right to form them? Sir, the answer, that no such step was taken, proves that no such step could have been taken. But, it is said, captures were made; admit it, and what does it prove? unquestionably the issue of those captures proves all that I wish to establish: captures were made, but who confirmed them? were they not acts of piracy until sanctioned by the national authority of congress? Sir, I have already shewn that they were, and that the colonies themselves thought so from their having asked congress to give those captures legality.

To admit that congress alone had the power to make war and conclude peace, and to deny that it had a right to judge of the legality of captures made under the warlike operation, appears to me a palpable absurdity. Congress alone granted power to make prize; is it not ridiculous then to assert that those, who gave the authority, could not legally decide in what manner it was used, whether justly or unjustly? If Pennsylvania had a right to resist the maritime jurisdiction of congress, I ask had she not the right to fit out fleets? Sir, the two acts are necessarily connected with and dependent on each other, and as we all know that a colony had not any right, notwithstanding the alleged sovereignty, either to fit out fleets or give commissions to make prize, we must admit the conclusion that no colony had a right to decide finally in any prize cause.

That no colony had that right, is further evident, as I have heretofore mentioned, from the facts that no prize courts were erected until after the recommendation of congress, and that Pennsylvania in particular, in her act of '78 recognizes the resolutions of congress as the foundation of prize courts.

We must, besides, Mr. Chairman, enquire who were the men, who composed congress? I never expected that the men, whom I have so often heard toasted as the saviours of their country, would be branded by the republican legislature of Pennsylvania of 1810 as enemies of the people —I never could have anticipated, nor could any one else have anticipated what we now hear every day—the glorious congress of '76 denounced as enemies of the states individually: there is more than adsurdity in this, it is absolutely shameful in men, who have so often professed to form their principles after the fair model of those patriots, who guided the revolutionary contest. I could scarcely have credited, had I not heard those denunciations, and, sir, let me ask, are they just or generous? will any man in his senses believe that the congress of '76 disregarded the particular rights of the individual states? can it be believed that the created would have trampled upon and insulted their creators? No, sir—in addition to the arguments that I have already used, I say that the distinguished reputation of congress furnishes testimony in favor of the decision of the court of appeals and of the justice of Olmstead's claim.

I might say a great deal, Mr. Chairman, of the immoral effects of war, and I might state some facts to prove that the immorality of privateering had contaminated many minds, in our sea-ports, during the war :—but, really, gentlemen are so tenacious of state character, that it has become almost criminal to speak truth about it. Sir, let me ask again, what would have been the consequence, had an American privateer captured a neutral ship, and an ignorant jury condemned it? would the neutral nation have demanded reparation from Pennsylvania or from Massachusetts? No, sir, application would have been made to congress in these terms—"You have commissioned privateers, one of them has illegally captured our neutral ship; we demand reparation under the laws of nations, as it is your business to see that trials are legally conducted in your prize courts." And, suppose, sir, that congress had answered thus—"We admit the justice of what you say, but Pennsylvania refuses to allow the national government to review its prize decisions."

Would not the civilized world have laughed at such a reply as this—most assuredly it would, and the aggrieved nation would

either have made war, or the national treasury would have been drained to compromise for the malconduct of a single state.

The pernicious tendency of such proceedings must be further apparent, when we recollect that France, Spain and Holland were neutral, and that it was materially our interest to secure their friendship: yet, a single act, committed without the review of congress, might have made them all our enemies. No doubt the propriety of the measure itself as well as apprehensions of this kind, induced congress to claim the right of reviewing the decisions of the state courts.

Much is said about the gentlemen who advocated state rights, as they are termed—governor Reed, Mr. Hutchinson, &c. and also about the jury. Sir, I entertain as sincere a veneration for the former, and quite as good an opinion of the latter, as any of their present panegyrists; but I shall not be detracting from the reputation of either, when I say that the former did not understand the laws of nations and maritime law as well as the congress court of appeals, and that there was not a man on the jury who knew any thing about either. At that time, sir, there were few, if any, printed reports of maritime decisions, such as we now have; that branch of law was very little understood, and had not acquired such a reputation as in our day; I may very reasonably suppose, therefore, that if any such particular knowledge prevailed, it was amongst those who were selected by the congress of '76, as a court of appeals on maritime cases.

And as to the jurors, I may admit them to have been strictly honest, and yet their infallibility will not therefore follow as a necessary consequence. I may say, as Mr. M'Kean said in the convention:

"It is a subject of amazement to me, to hear gentlemen contend that the verdict of a jury should be without revision in all cases. Jurors are not infallible because they are twelve in number. When the law is so blended with the fact as to be almost inseparable, may not the decision of a jury be erroneous?"

This, sir, was what the late governor M'Kean said in 1787, about jury trial, and I know very well, that gentlemen on this floor, who now find it convenient to say so much about jury trial, do not consider more perfectly by than Mr. M'Kean did. Let us not then, be so often again told of the sacred trial of jury, which the existing arbitration laws bear such strong testimony against.

As to sovereignty of states, I was in hopes some gentlemen would have accepted my challenge and told us the meaning of the term: as it is now every day used, it is a burlesque upon the dignity of legislation. There must be supremacy somewhere, and an *imperium in imperio* is admitted to be no more than the dream of a disordered mind. The peculiarity of the organiza-

tion of our governmental system is one of its distinguishing characteristics; a state authority is confined to its local concerns; to that extent it is sovereign and not further; should it encroach beyond that line, the system will be deranged and anarchy must follow, as chaos does follow the derangement of the heavenly bodies. Let ambitious men beware then, how they encroach upon the rights of the union, and let the people entertain a jealousy of those who would transcend the powers given by the constitution.

Something, sir, has been said of Olmstead, but it was of that description which proves that his character has remained throughout irreproachable. For my part, when I look back upon the events of his life, I cannot but say that Pennsylvania has not only treated him with injustice but with cruelty. Deprived of some little property that he had accquired, he risked his life to regain his freedom and some compensation for his sufferings—when within sight of his country, a public armed vessel met him and instead of affording him aid, if he wanted it, stratagem was employed to take his hard earned-prize from him, and stratagem succeeded. He was conveyed to sea whilst the prize was taken up the Delaware; the popular counsellors were engaged against him, and when suffered to land, he found himself without money and among strangers. Let gentlemen reflect upon this lamentable condition; let them reflect that those who took the Active from him risked nothing, and I am persuaded that they must agree with me, that instead of abetting the plunder of this pennyless seaman, it would have been much more just and magnanimous in the state to have abandoned the pretended claim.

Instead of this, sir, the whole state of Pennsylvania seemed to have taken part against this stranger; officers, judges, and citizens. Had it not been for a man at that time high in public opinion, general Arnold, who probably befriended him in consideration of his being a native of one of the new-England states, it is probable that Olmstead would not have had even the opportunity he enjoyed of sustaining his cause.

Under all these disadvantages, and having unpopular counsel, Mr. Willam Lewis, is it surprising that the jury decided as it did? is it not astonishing that they consented to award him a fourth part of the prize? Judge M'Kean confessed that all the citizens of this state were in some degree parties against Olmstead, and the decision of the jury bears the evidence of self-interest.

Now, sir, ought we not, for the honor of the country, to rejoice that there remained another tribunal? ought we not to felicitate ourselves that there remained a court which could have

no interest in the controversy, which had every incitement to decide honestly and impartially? that the congress court of appeals was a tribunal deserving high consideration, every unimpassioned man must admit; and if I were to mention any particular act, which it performed, more deserving applause than others, I should mention the decision in Olmstead's case—in favor of a friendless suitor, in contradiction to the demands of the great state of Pennsylvania.

Sir, it would be improper to repeat, on other points, what I said yesterday; it is sufficient for me to say, that I challenge refutation of any of the arguments I have adduced. I am anxious to hear gentlemen, and I pray them to exert their faculties, that there may be some sort of excuse for the disgraceful proceedings we have been led into.

During the last session as well as the present, gentlemen talked a great deal about Massachusetts, and if I mistake not some resolutions were introduced denouncing that state. Was all this sincere, or was it merely a cloak for our own disregard of the principles of our government? Was all this, like our resolutions approving the conduct of the United States government, sham patriotism? If it was not, sir, the resolutions on your table will be indignantly rejected: but should they be adopted, I am of opinion that the rest of the states may well suspect our professions. Massachusetts, Mr. Chairman, has at no time shown so daring a front as Pennsylvania; the disorderly proceedings of some private men, or the impotent resolutions of the legislature of that state vanish into insignificance when compared with the regularly organised and governmental opposition of Pennsylvania: there you saw a war of words, but here you saw the bayonet thrust into the constitution of the union, and the work of our bravest and wisest men demolished by a sergeant's guard under the orders of the commander in chief of Pennsylvania.

Sir, we may talk of Burr, but all his schemes and all the detraction of the enemies of free government, were harmless, when compared with this monstrous, this scandalous resistance on the part of Pennsylvania, or rather on the part of her agents; for the people abhor the treason.

Let gentlemen seriously reflect upon the dangerous example held out by the armed resistance of a single state against all the rest—let them remember that our government is the only one on earth that protects the whole people equally—and that we have enemies within and without, who delight in serving our republican reputation already tarnished. If gentlemen have no regard for themselves, let them bear in mind that we are bound to hand down to posterity the rights and blessings we have enjoyed. Let them

recollect that they are Americans and not merely Pennsylvanians. If, sir, gentlemen do not hearken to the calls of patriotism and prudence, if they consent to pass the resolutions on your table and establish the position that it is meritorious to resist the union by arms, then it requires no powers of divination to predict, that from that moment the ties which unite the states will begin to loosen, and at length your boasted system of government will, from its very nature, produce its own dissolution—let me conjure this committee, by the regard they profess for our republican institutions and by the oaths they have taken to support them, not to vote for the disgraceful resolutions on this table, which are introduced for the purpose of propping the withering reputation of a misguided officer and not because state rights demand our interference.

[When Mr. Duane had concluded, Mr. Brown from Greene, thought the house had better adjourn until the afternoon—I don't know, said he, that I shall say any thing on the question—I don't know that I shall; but if I do make a speech, it shall be a short speech. I think, however, we had better adjourn, that gentlemen who want to make long speeches, may have time to prepare, for it seems that the goodness of a speech consists in its being a long one.]

Mr. Thompson thought that time ought to be given for *thinking*, as well as for speaking.

The house adjourned.

SAME DAY, IN THE AFTERNOON.

Mr. Todd. In speaking against the resolutions it is not my intention to take up the time of the committee, by repeating the arguments already used.

A mistake appears to have run through the preamble of these resolutions, as well as through the speeches of gentlemen in their favor. After describing the judgment of the court, as an attack upon our treasury; they have proceeded to talk of the insult offered to state sovereignty, of the necessity of redress and satisfaction—and here lies the mistake; because throughout this string of resolutions the subject of redress is totally omitted. No attempt is made at satisfaction—true, there is a denunciation sufficiently violent against the federal judiciary and the national union; what might be considered as tantamount to a withdrawal of the state of Pennsylvania from the confederacy and a declara-

tion of war against the union—All the other resolutions appear to have one object in view which covered and buried as it is thought to be, and not perhaps so plain to be seen at first sight, may easily be laid bare to the view of every man in the state. This measure of violence is not to be concealed under the name of supporting state rights—If any measure were here proposed for the just defence of the constitutional sovereignty of the state, the people of Pennsylvania would consider that an object for which to risk the public peace and the stability of the federal union—but let us be assured they are not disposed to incur that risk merely to compliment an executive magistrate—to support the infallibility of an individual by an outrage upon the peace and happiness of millions of citizens.

Sir, the people do not breath in the little atmosphere which surrounds the executive—devotion to an individual has never been one of their political maxims—they will examine this measure to the very bottom—and let us take care they do not find that it is not *their* interest but executive infallibility that is to be supported—look at one glaring fact which stares us in the face—and almost convicts us of prevarication if we say that we are only defending the cause of state sovereignty against the corruption of the federal court—here we take in hand to demand the chief justice of the United States and bring against him every opprobrious charge of cunning, sophistry, corruption, violation of our rights and of the constitution, language so outrageous that it must be inferred, had we him in our power, we wouldt ear himt in pieces. The particular crime alleged against him is that he concurred in and delivered the unanimous opinion of the court in which he presides, that execution should be allowed on a judgment obtained in due form, at least of law, in a suit of Gideon Olmstead against the representatives of David Rittenhouse—ajudgment subsisting in full force, and from which no appeal had been entered. Yet our own chief justice, before whom the whole cause and the state claim was brought by the state officers, on the express directions of the Governor, and from whom redress was demanded and a discharge from an imprisonment by an usurped authority, as alledged—(and every one knows that if such imprisonment of a citizen by the United States judiciary was unwarranted by law and the constitntion, it was the duty of a Pennsylvania judge, when redress was demanded from him, to interfere and liberate a citizen from the fangs of usurped power) yet this judge, who was thus called upon to give a judicial opinion directly, not upon the little point whether execution might issue from a judgment unappealed from, but an opinion on the whole subject—an opinion directly against all our pretensions of state sovereignty—solemnly affirming all the proceedings of the

federal court, branding the state opposition as an attack upon the constitution. And he, sir, our own officer, responsible, punishable here, yet he and his conduct are passed by in total silence by those who now wish to be thought the red hot advocates of state sovereignty. Is it indeed only from the chief justice of the United States that we are to exact a due respect for state interest? and is it only those judges over whom we have no controul that we are to chastise for illegal opinions?

In searching the true cause of this miserable absurdity, and self contradiction, stamped as it is upon the face of our proceedings, the public, sir, having, as they certainly do have, an eye upon our whole conduct, will be led to suspect a motive not much to our credit as advocates for state sovereignty; that we have carefully avoided putting our own judge into the articles of denunciation—because in attempting to do that, there was no stopping with mere reproachful language—there would then be danger of being forced to *do* something. Abuse the United States judge, we need not fear the question, "why we do not impeach" for we have not the power—but insert judge Tilghman's name in the list of corrupt judges, and reproach him for having given a similar judicial opinion, *that* would immediately carry us out of our course beyond the flattery of a governor—*that* would require us to do something for state rights. Sir, we seem to be cautious how we bring this attack upon the federal union directly to the notice of the people of Pennsylvania, by impeaching their chief justice for honestly doing in defiance of power what he thought to be his duty.

I am willing to believe, and know how very possible it is that these resolutions and preamble may have a meaning and extent different from what the framer intended—I meddle not with the motives of any person—but while I am doing my part to avert the disgrace which such measures will, in my opinion, fix on this legislature, I must speak of them as they appear to me—and when I express my abhorrence of measures, let not gentlemen suppose that my wish is to call in question the sincerity of those who may support them. Some gentlemen may think these proceedings dignified, prudent and necessary—they have a right so to think and so to speak—I on the contrary may believe them to be cringing and servile on the one extreme, and rash, factious, mischievous, pernicious on the other—and on a question like this, involving the dearest interests of those who placed me here, I should be unworthy of the seat I hold, if what I think I should hesitate to say.

These proceedings appear to me to have two objects—first, to insult the federal union, to bid defiance, to show our contempt

for the whole confederacy—second, to flatter our governor—or rather, the latter appears to be the principal object.

How we became engaged in this business would puzzle any one to tell—in order to give a name to the work we are about, we are obliged to call it Olmstead's case,—as if every one did not know that the Olmstead case was put an end to at the last session by the legislature paying the money—passing a law for that very purpose—and now we are compelled to listen to speeches made for the purpose of proving that Olmstead's demand was unconstitutional. Of the force of the reasoning made use of, I, for one, declare myself no judge—had the debate been about repealing that law, for payment of the money, I should have endeavored to pay more attention to the arguments.

But before the law for paying the money was passed, the same legislature referred the question in dispute directly to congress, and to each state in the union, by the proposal for amending the federal constitution. From some states answers have been received, and those, as it happens, unanimously against us—the decision of other states and of congress remains yet to be heard—yet we, without any new occasion or any reason under Heaven that can be avowed, take the cause back again into our own hands, and offering a most contemptuous indignity to every state in the union, as well those whose solemn decision has been given against us as those whose answers we have not the decent patience to wait for, we proceed at once to an attack upon the federal government, which for cool premeditated, unprovoked insult has no example on the records of any legislative body—Many were the disputes and collisons between the American states before the existence of the federal constitution—and some of them carried to the length of actual war—In those disputes Pennsylvania was sometimes implicated—but you will find no trace of this language of invective and defiance coming from a legislative body. And now gentlemen are to tell us,—here is no insult offered to congress nor to the federal union—we only attack their judiciary. What! should a solemn legislative act be brought and presented to us—denouncing the judges of Pennsylvania and implying that we had crowded our courts with perjured, sophistical knaves and jugglers, who regarded neither constitution nor justice, and that we maintained them in every species of judicial profligacy and corruption; is there a man here who would not start from his seat and deem it an insult? or is it no insult to tell those states which have unanimously given, or those which may give, their solemn opinions against us on the Olmstead controversy, that they are defending the notorious corruptions and usurpations of the federal courts?—that they are traitors to state rights and state sovereignty? sir,

this system of invective once begun, let gentlemen reflect where it is likely to end. The consequences are inevitable and plain.

To take these resolutions separately—it being clear, that they, with their preamble, may be considered as the declaration of independence of Pennsylvania, they are worth examining. It is said that the old congress gained great applause throughout Europe for their declaration of independence, for the language, the spirit, the argument. Since we are to have our declaration, I could wish great alteration in the style.

One of the resolutions contains a general doctrine which none of us will be inclined to dispute—" that the constitutional sovereignty of the state ought to be guarded." All encroachments are certainly dangerous; but considering the purpose and occasion, here the doctrine seems to be misapplied. Did this resolution stand singly, I would vote just as I would if gentlemen should compel me to vote on a question, whether two and two make four.

In another resolution, we applaud the last house of representatives for requesting the members of both houses of congress to use their best endeavors to have the constitution amended. In the name of common sense what is this for? We, the house of representatives, undertake to support by the weight of our authority, an act of the whole legislature done at the preceding session. Is there any example for this, since the business of legislation begun? And this, by the next resolution, we require to be sent to our members of congress—for what purpose?—by way of a repetition of our former request, as must be presumed; otherwise the thing can have no object or meaning. But let us ask ourselves, whether it is not due to our own dignity, as a legislative body to know first what has been done under our former recommendation for the same purpose—to hear whether our amendment has been acceeded to or rejected—whether it has been yet proposed according to our requisition. If our representatives in congress have made the proposal, might we not wait a decent time, until we hear the result?—But if they have disregarded our request altogether, is it for us, so soon after, to repeat the same humble petition to the same men? Upon this resolution nothing now need be said—it does not appear to have been intended for any purpose other than to make one in the number—to fill up—to serve as part of the cover to the real object.

But we are liberal in applause—that the world may see all our admiration is not confined to the governor, we here plaster and daub the president of the United States all over, as an advocate for the state rights, and an enemy to the usurpation of the judges in Olmstead's case:

The friends of these resolutions, must admit, that the man of whom they thus speak, is at the head of that government, whose authority is here denounced—by whose very executive ministers the chastisement was inflicted under which we have smarted—who prosecuted, convicted and imprisoned the agents acting under our governor's orders and bearing the flag of Pennsylvania. And for the sake of consistency, let them observe that the opinion and the very words of the president about his being obliged by law, to carry into effect the judgment of the supreme court, are introduced into our preamble with a sneering *if* prefixed. I apprehend a majority of the committee will find some difficulty in swallowing this resolution. In the conviction and imprisonment of gen. Bright and the men acting under him, every citizen of Pennsylvania, whatever might have been his sentiments as to the resistance, must have already suffered sufficient mortification—And now, we ourselves are about to add the last of all indignities, by the vile and groveling affectation of returning thanks to the president for his mercy in the punishment. We might as well put in the names of judge Washington and judge Peters, and thank them for their lenity in the sentence.—This resolution must have been inserted without consideration; but since it has been printed, and we have had time to examine and reflect, I do hope, for the honor of that people, whom we represent, that there will not be found one on this floor, so dead to every sense of shame, as to agree to this unexampled, this slavish, reptile meanness, of affecting to give thanks to our corrector, for withholding a few of the stripes. And, sir, this meanness appears to be aggravated by the peculiar wording of the resolution, implying, or pretending a belief in us, that the motive which induced the president to grant the pardon, was the injustice and unconstitutionality of the sentence. This opinion, had been sometimes given by persons who could not be supposed to be serious. But since the assertion is brought before us in the shape of a resolution, I am bound to conclude, that it is really believed by some gentlemen—Now to agree with them about the absurdity of supposing, that the president could condemn as unjust and unconstitutional, a prosecution carried on for such a length of time, by his own officer, bound to obey his orders, in a case of such public importance, would be a mere waste of words. But, if any document is wanted to prove what, in the very nature of it is so notorious, the pardon granted to general Bright and the men acting under him will be conclusive. The president himself then gives the reason for the pardon; not the reasons which we frame for him, and which we thank him for. [Here Mr. Todd read the pardon.] "James Madison, president of the United States of America, to all who shall see these presents, greeting:

"Whereas, it has been represented to me, that general Michael Bright, James Atkinson, William Cole, Charles Westfall, Samuel Wilkins, Abraham Ogden, Daniel Phyle, Charles Hong, all of the state of Pennsylvania, were, at a circuit court of the United States, lately held for the Pennsylvania district, at Philadelphia, duly and severally convicted of opposing and obstructing the marshal for that district, in the execution of his official duty; and therefore, the said court sentenced the said Michael Bright, to three months imprisonment, and to pay to the United States a fine of two hundred dollars; and the several others above named, to one month's imprisonment respectively, and to pay to the United States, a fine of fifty dollars; and whereas, it is considered that the offences committed in this case, proceeded rather from a mistaken sense of duty, than from a spirit of disobedience, to the authority and laws of the United States: Now therefore, be it known, that I James Madison, president of the United States of America, for these and other good causes and considerations me thereunto moving, do, by these presents, pardon and remit, to the several persons above named, the offences, as aforesaid, by them committed, and the fines respectively incurred by them; requiring that all prosecutions and judicial proceedings, for and on account thereof, be forthwith stayed and discharged.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed to these presents, this sixth day of May, in the year of our Lord, 1809; and of the independence of the United States, the thirty-third.

(L. S.)

(Signed)

JAMES MADISON.

By the president,
R. SMITH,
Secretary of state.

So, it is evident, that under colour of applause and affectation of gratitude, we here charge the president flatly with duplicity, by giving him credit for motives directly the contrary of those which he himself has publicly assigned for his own conduct. Leaving out of question the meanness, the servility and the strong suspicion which those who know us only from our acts may possibly have of our sincerity, can any thing be more truly ridiculous, than thus to string the governor and president together in our resolutions, and applaud them both in one breath for their services to state rights in the Olmstead's business? If any gentleman can vote for this resolution, he may look upon himself as prepared to vote for the rest.

The proceedings of the last session, have been mentioned, to justify the present, as if there was any possible resemblance between them; or as if the occasion and circumstances were any way similar. In the resolutions of last session, was there any nauseous adulation of governors or presidents? Was there any charge of sophistry and corruption against the United States courts? Had the question then been settled? had the money then been paid? was the dispute then dead and at an end as it is at present? Yet we must be told of the proceedings of the last session. Sir, if there was nothing else, those proceedings are enough to shew the madness of the present measures, and to what a depth of degradation we are about to sink, by agreeing to these resolutions. Sir, at the close of the last session, a law was passed appropriating money from the public treasury for the payment of Olmstead's claim, and in order to satisfy that very judgment of the federal court, which we are now to protest against as an attack upon our rights, and a notorious usurpation. I do not mistake. This was the law, a copy of which was sent by the governor to the president of the United States—and the votes upon its passage are recorded; under this law the money actually was paid. Now, though we may not have voted for that law ourselves, yet we ought, perhaps, to have some mercy for the feelings and honor of those who did vote for it, and not impute to them the charge of providing, by a solemn act of the legislature, for the payment of a claim notoriously unjust and founded on usurpation.

Shall we excuse them, by alleging, that, in giving up the money demanded, they acted under the influence of terror, against the dictates of their consciences, and that, frightened at the shaking of a marshal's staff, they surrendered not only the public property, but the honor of the state? But so far from there being any reasonable ground of alarm when this law was passed, the marshal had not even begun to summon his posse; and if he had begun, it is not to be supposed, that this legislature could have been induced to give a scandalous vote against their consciences, to ratify and confirm an unconstitutional sentence of the federal court—to sanction what is now called a robbery upon our treasury. If Olmstead's claim was then in the house supposed to be what it is now represented, it is impossible that the law for paying it, should have been passed by so great a majority. Ask those who voted for that law their reason—will they answer that they knew Olmstead's claim was founded on nothing but the juggling and corruption of a federal court—but they paid it because they heard of the writ? No—they would shrink from the scandalous imputation of having from such motives given up the plain rights of the state. What, if the description now

given to Olmstead's claim had been inserted in the preamble of the bill providing for its payment, would the legislature from any motive under Heaven, have sanctioned a claim, declaring at the same time, that it was founded upon nothing better than iniquity and usurpation? But that mode would have been, beyond all comparison, more manly and more honorable than to pay first and make the declaration afterwards. Sir, we may well differ in opinion as to the just extent of the state sovereignty under the present constitution—but on one point I trust we are unanimous, the honor, the consistency of our legislature, ought to be regarded. But where is the consistency here? Shall it be only when there is nothing to be done, that we are to be conquerors? or, is this the mode in which gentlemen are to lead us on to the protection of state sovereignty—at the moment of the invasion of our rights, to shrink and submit, and after opening our treasury and giving up the money demanded, then to bluster and cant about resistance, and talk of what an imprudent, iniquitous exaction we have submitted to?

Let any gentleman make out if he can, how these resolutions are not to be deemed useless, absurd, disgraceful—glad should I be to be told on what reasonable occasion, for what purpose or by what means we are employed in debating upon measures like these—we, the high grand jury of Pennsylvania, put here by the people, not to flatter their executive ministers, but to watch them, to stand independent of them, to call them to account, to impeach if necessary, are now engaged in propping up the credit of an individual under the pretence of an old dispute which settled as it has been and dead is dug out of the grave for the purpose—I say settled—for the law of last year providing for the payment of Olmstead's claim recited as the reason for its passage that very judgment of the federal court which we are now denouncing, and recited it without one word of censure or complaint—in order to plunge into all these absurdities we are obliged to go wholly out of every legislative course—to obviate and contradict charges which as a legislative body we never heard—and so totally intent are we upon our object that we are not afraid to compleat it by an attack upon the federal union.

It has hitherto been considered the chief blessing of a republican form of government that the people could not be involved in the quarrels of any chief—nor be dragged into difficulties to support the honor or the pride of an individual—divided into clans or under monarchs, the little passions, the little affronts, the personal interests of a vain leader were formerly enough to throw the whole nation into war. I hope we are not going to establish a federal system.

Are we sure that we are totally exempt from a judicial influence—and that the object of the resolutions is to contend for any

interest of the public? I will believe it if any gentleman will undertake to point out, or to conjecture what good or benefit to the state either will or possibly can result from their adoption—but no such benefit can be shown—the fact is, public interest is here out of the question.

I find myself compelled by the course which gentlemen have thought fit to give this debate to mention a subject which I approach with reluctance and some degree of horror; I mean the subject of executive influence, of officers and of legislative office-hunting—never till this time had I so strong a sense of the extent and enormity of the evil. What! is the thing become so notorious and so general that the gentleman who spoke first in favor of these resolutions is to tell us that he neither asks nor expects any appointment or recompence? and to make this declaration with an air of triumph and pride, as if his case was an exception from the general rule, and his virtue superior to that of the common run of us? I am not disposed to question the word of the gentleman; and believing him, as I do very sincerely, let me add, that whenever I am reduced to the necessity of speaking on a question like this in such a tone as to oblige me, in order to get any credit with this house or with the public, to give security that I am not hungering for an office, I shall then, sir, think it high time for me to quit this seat.

But it is certain there is a horrible disease which appears every day to be gaining ground, an avarice, a greediness, a rapacity for office, to an extent never before heard of—this disease reaching the legislature, there is danger of its becoming an incurable cancer, twisting its roots round the very vitals of the body politic. To speak of the present time might give occasion to suppose that my design was to throw reproaches, when my only wish is to point out the rapid progress of an alarming corruption, which must be checked or the republic goes to perdition—but without offence I may mention, what many here will recollect, that at the very last session a gentleman on this floor, a member of this house, declared to our very faces that there were no less than thirty-three open, avowed applicants to the governor for office, all of them at one time and all of them members of the legislature—I am not pledging myself for the truth of the assertion, though I believe the gentleman from whom it came incapable of falsehood; but the hideous fact was pronounced in the house and was not contradicted. Without saying that these means were made use of or intended to be; yet here, sir, were prepared the instruments and the means of executive influence and corruption, more extensive and more effectual than were ever possessed by a British king over a British parliament in the most profligate times of that empire.

A legislative applicant for an office under the governor cannot speak the language, cannot sustain the dignity, cannot feel the sentiments of the independent, uncorrupted, freemen of Pennsylvania.

But the constitution has become a dead letter—true, this irresistible executive influence was intended to be guarded against—the means of seduction were designed to be cut off, and the independence of members of the legislature to be secured by that provision of the constitution excluding the governor's officers from a seat on this floor. But rather let me see ten known actual officers of the governor voting here than one expectant, with his appointment depending perhaps on his vote. An office actually given can secure no more than one adherent,—an office in expectancy may, as times go now, retain half a dozen partizans; an existing officer would have some chance of continuance though he should prove refractory in his votes—besides, all eyes would be upon him—there is a depth of servility and sycophancy which he might not descend to—there may be a sense of shame in him which a hidden, creeping expectant cannot feel.

I have done with the resolutions as far as they respect the encomium on the governor—but I cannot conclude without again expressing my sense of the enormity of this first resolution, and of the invectives which this occasion is seized on to cast upon the federal government. We are to consider what is that federal goverment we are exhorted to view with so much terror, or at what act of that government we ought to feel this alarm. The strength of the federal union is founded on that of the several states, its people are the people of the several states—take away the several states, and there is not even a shadow left of that government. It is a government of the people, in which the people of Pennsylvania have their voice and their influence.

That federal union has preserved us in tranquility while every other quarter of the world has been the scene of war and desolation—it has guarded us from all external force, and from every species of domestic treason. For many years that government has not laid the weight of a feather upon its people; we have an interest in its stability. Under it every thing flourishes,—agriculture, manufactures, commerce. To whatever place throughout the whole earth a citizen of Pennsylvania may go, he there finds himself supported and protected by the federal government—while that government and the federal union exists, upon which of our borders have we an enemy to fear? What act of oppression can we charge upon that government—what act of insolence or haughtiness—what insult have we suffered from the federal union?

It cannot be that this favorite total independence and soverignty of the several states, will prove conducive to the happiness of the people or to their liberty—to destroy the bond of union, to have no common arbiter to decide the disputes and jarring interests of so many neighboring republics in total independence of each other, with that mischievous propensity for war, by which all adjoining nations small or great are cursed; and the inevitable disputes which must arise, and which the sword only can settle, and of which contests, whether ending in victory or defeat, the final result must be the same,—standing armies, oppression, despotism.

But it appears from the speeches of gentlemen, and from the report of the committee, that nothing but state sovereignty is to be now regarded—that the great danger to liberty against which only we ought to guard, is the consolidation of the union—and that it is the duty of every friend of his country, and of liberty, to extend the sovereignty of the states, and to curtail and oppose the supremacy of the federal union. Have those who argue in this way been blind to past events; or are we to let the experience of twenty years be thrown away upon us? Experience teaches the very opposite doctrine. It is notorious, that every attempt against liberty, every conspiracy against the people has come forward under the cloak of supporting state rights, state interests, and state divisions. From the political incendiaries and assassins, who aimed their daggers at the federal union under the watch word of "negro states by themselves, the Potomack the boundary," down to the adherents of Burr, whose topic of seduction was the state rights and state sovereignty of the people of Ohio and Kentucky—to seize the United States, lands and defend them—to act like men capable of taking care of themselves and to throw off the degrading and unprofitable dependence upon the eastern part of the continent; yet our understandings must now be insulted with exhortations to fear no danger except from the federal union—that we cannot be too watchful, too quick, too factious in quarrelling for every pretension of state sovereignty—without evidence or any rational ground of suspicion that any enemy of our peace and liberty can be so mad as to dream of effecting a consolidation of the union; but, on the contrary, when every political incendiary, every enemy to liberty who has yet dared to avow himself by any act, has founded his plan of division and despotism on this very plea of danger from the federal government, and on the pretentions of state sovereignty. With this book of experience before them gentlemen choose to take their text from the suspicions and chimeras of some people at the adoption of the federal constitution, and tire us with eternal repetitions of the anxious solicitude

felt at that time, lest the national union should swallow up the state governments. When reason and the course of events teaches us that the present danger is altogether on the other side, lest state encroachments should weaken and ultimately destroy the national compact; and when the miseries which must be produced by this favorite state independence are plain to every man—a blessed time indeed—Pennsylvania surrounded by six sovereign independent nations, New-York on one side, Virginia and Maryland on another, New-Jersey Delaware and Ohio—here then is the danger—from state pride---state usurpations---not from what are called the devouring jaws of the federal government. It is but yesterday when a single one of these states, which gentlemen are so fearful will be swallowed up, and that state not the largest, could put and enforce its veto upon the measures of the general government—Massachusetts could oblige congress to raise the embargo—and the whole nation could do nothing but witness this indignity, and look on in silence while the fruits of a large and heavy restriction were snatched from them, and given up by state authority, and state faction, under the name of state sovereignty—And thus was all you had suffered under the embargo, worse than thrown away, while our enemies abroad, who when they were languishing under that restriction and dreading its continuance, had promised every thing fair and just; yet retracted and denied their offers, and resumed all their accustomed insolence, and ten times more, as soon as they heard that state sovereignty in America had interfered and raised its head against the federal union. Here then is the danger against which we ought to guard—It comes from state encroachments, from state power—from means such as we are now asked to pursue----from the pernicious example of supporting the personal aggrandizement of an individual under the pretence of state rights. These produce disorder, civil war, despotism, inevitably.---I will not trespass upon the patience of the committee with any further observations.

Mr. Tarr. Mr. Chairman, I don't mean to make a very lengthy speech on this subject—The gentleman's absurd language has placed in a horrid point of view the proceedings of a former legislature, and the conduct of the executive, and has endeavored to impress on the members of this house that it was their intention to declare war against the general government. Happily for this house it has pleased the gentleman to apply his observations to all the resolutions. He has not selected one single point on which he dwelt---he only dwelt on the horrid situation we would be in by declaring war against the general government. I say again there is no such intention—there is no hostility to the general government, or the legal coustituted

authorities. I ask—is it levying war when an officer, by an assumed authority, in violation of articles by which he is to be governed, acts, and is resisted? Would it not be just, if a constable without proper authority, would break open and search the trunks of gentlemen—would not gentlemen be justified in knocking him down? The gentlemen who are the advocates of this stretch of power of the judges, say we are going in opposition to the general government—But I say no—We say that by the law of 1803, the officer, bound by his oath, was justified to do as he did without risquing his life—We say he was justified in carrying that law into execution. All the arguments of gentlemen go to one single point—to show the superior authority of congress—that they had power to make war and peace, and a right to decide upon all legal proceedings in cases of captures, made by any of the United States. Gentlemen who remember that time—who have a recollection of it, know it was not the case—but some gentlemen, may be, who were not born at that time, nor have read the history, have been led into an argument that the states had no power—I say they have been led into a mistake. I shall endeavor to show that Pennsylvania never agreed that congress had any power in this act at all, nor did they give this power to the United States. They gave no power to the congress of '75; nor did they ever attempt to exercise any. They were nothing more than a colonial committee. They were appointed to repair to Philadelphia, to report the resolutions and determinations of the different colonies. I challenge one instance of congress passing one law compelling obedience of the citizens of the United States—and gentlemen have boldly dared us to show how the state became independent. Wonderful indeed! Very hard to be answered! I would ask how they delegated sovereignty to sovereign states, when they were not sovereign? Pennsylvania in '76 declared herself a sovereign state and adopted a constitution, and never acknowleged any more sovereign. That constitution was never considered sovereign above the people of Pennsylvania, and we have the honor to be their representatives—we are bound now by the constitution of this and of the United States. I shall read the oath of the members of the legislature of '76.

"I do swear (or affirm,) that as a member of this assembly, I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state; but will in all things, conduct myself as a faithful, honest representative and guardian of the people, according to the best of my abilities."

Not a word about the constitution of the United States—not a word of congress—the delegates to congress were appointed by the legislature. The people did not choose the representatives in congress—Pennsylvania chose delegates—and reserved the power of replacing them whenever her representatives tho't proper. Pennsylvania in '76 had established courts—courts for the trial of all causes, or superior courts. Congress at that time had none such, because they had no power. Gentlemen say they had the power of war and peace. Now I ask gentlemen to show any act or power to establish courts of appeals. Was any such thing agreed to by the colonies? No such thing was done—even under the confederation they had no such power. I'll read the second article.

"Art. 2. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in congress assembled."

That is the very language of the present constitution. But gentlemen tell us they have the sovereign power of making war, and, we must not permit this as it is a declaration of war. I find danger from that quarter—the federal judiciary is applauded—and I find that judiciary has found advocates in Pennsylvania, even when they exceed their powers. I hope that when the people of Pennsylvania find their rights infringed they will resent it.

Mr. Chairman, I was astonished at the manner, a few days since, this subject was treated. My language is not capable of giving it in precisely the same language; but for thirty years we were represented as a gang of robbers—that this insignificant, petty, trifling state had set up her claim against the great sovereign union, and would not obey the authority of the United States. I say Pennsylvania will endeavor to guard her rights as secured by the constitution of the United States.

In order to show, Mr. Chairman, that congress did possess no power previous to the confederation, and that they never attempted to act on any question without the consent of the colonies, founded on the articles of confederation—the articles of confederation expressly directed them—*they* did not choose, but the *people* choose.

Their delegates were instructed and required by the legislature to agree to the articles of confederation—not with a view of placing congress in a degraded situation, but to preserve the rights of the people.

I believe with the gentleman from Bedford (Mr. Todd,) that most worthy characters composed that body, in '75 and 76; but they had no such power, nor did they attempt it.

In congress on the 10th of July '75, a little better than two months before the resolution to the colonies, recommending to them courts of appeal, was adopted—an address of the continental congress (who possessed such great powers of war and peace) was written to the colonies. It was adopted by the legislature. But that they possessed such great powers of war and peace in '76, I will read the petition of congress on the 10th of July, 1775, to the lord mayor, aldermen and livery of London.

"MY LORD,

"Permit the delegates of the people of twelve ancient colonies, to pay your lordship, and the very respectable body of which you are head, the just tribute of gratitude and thanks, for the virtuous and unsolicited resentment you have shown to the violated rights of a free people. The city of London, my lord, having in all ages, approved itself the patron of liberty, and the support of just government, against lawless tyranny and oppression, cannot fail to make us deeply sensible of the powerful aid, our cause must receive from such advocates. A cause, my lord, worthy the support of the first city in the world, as it involves the fate of a great continent, and threatens to shake the foundations of a flourishing, and, until lately, a happy empire.

"North-America, my lord, wishes most ardently for a lasting connection with Great-Britain on terms of just and equal liberty; less than which generous minds will not offer, nor brave and free ones be willing to receive.

"A cruel war has at length been opened against us, and whilst we prepare to defend ourselves like the descendants of Britons, we still hope that the mediation of wise and good citizens, will at length prevail over despotism, and restore harmony and peace, on permanent principles, to an oppressed and divided empire.

"We have the honor to be,
My lord,
With great esteem,
Your lordship's
Faithful friends fellow subjects."

This certainly don't shew, that they had such great powers of peace and war at that time, as is talked of by the gentleman.

Astonishing! I say this not for the purpose of throwing any slur. This petition was considered by the different colonies, and about two months after there were captures by the colonies. I only bring this into the view of the house to show that congress did not consider themselves, as it was yesterday said they were, that they were sovereign, and possessed the power of war, and peace, and of establishing courts—I say a little more than two months after it was recommended to establish courts, Penn-

sylvania adopted the plan. Now, I want to know, on what ground, unless it was the law of Pennsylvania, delegated these powers to congress. I call on gentlemen, and challenge them with the aid of all the books in the library of this house, to show one instance where one single spark of power was given between this period and the articles of confederation—and if this can't be shown, what authority had the court of appeals to act contrary to the law of Pennsylvania? There was not a single spark of power in the congress of '75 and '76, nor did they assume pretensions to such power. And now I contend, that they have no powers at this period, but under the constitution. An officer under the judicial department—a department which ought to be watched—acting contrary to the powers given him by the constitution is a violation of his duty, and the representatives of a free state will not hesitate to pronounce it such. Pennsylvania at the same time will cheerfully support the United States in all measures, provided they go agreeably to the constitution of the United States, and not otherwise.

History furnishes sufficient accounts on this head—all republics have lost their liberty from that quarter—by encroachments of this kind—yielding up the state sovereignty has been the cause of it. It is the object of many in Pennsylvania—they produce this in order to show that there is a disposition in Pennsylvania to swallow up—to destroy the sovereignty of the union, and place it in the several states. But in order to show the contrary, and that there is a disposition to swallow up the sacred power of the state, I will read you the remarks of an editor.

[Here Mr. Tarr read an extract from the Aurora, to show that the editor of that paper, was in favor of a consolidation of the states.]

So says the author of some piece—It is not signed—I presume the editor is the author of it. The object is obvious—that he finds we can do without state governments. Who is there in Pennsylvania, who would presume to lay hands on, and thus tear from the people of Pennsylvania their state government? to destroy the constitution under which we enjoy liberty?

What does the history of Europe prove? destroy the rights of the people, and what is it but a monarchy? Is monarchy the object, or the order of the day? Are we to be frightened by pictures, or the horrors of war? Are we to be told to sacrifice our own rights—our state rights; and consolidate them with the general government—and depend upon this great, and ungenerous judiciary?

[Here Mr. Tarr read another extract from the same publication in the Aurora.]

Here shows a determination to destroy the state governments, under the mask of securing the United States' constitution. Let the little, petty state sovereignties be thrown aside—state rights have nothing to do with the power of the courts. The constitution, I presume, extended liberty and freedom too extensively to the little, petty states. The duration of the constitution should be alone in their power. Where was the best blood of the state shed? At Brandywine, at the Paoli, and Germantown—in the state of Pennsylvania, was the very seat of these engagements. Not only that, but our frontiers were bordered by the wild savages of the wood, and the gentleman, who perhaps did not exist at that period, represents as being the plunderers of the union. Pennsylvania bore her proportion, equal, if not more--and gentlemen have represented her as plundering the union in '76, and from that to the present day.

Pennsylvania, true to the cause of freedom, has supported the union in all just and necessary measures---but will not tamely submit without a murmur. Will gentlemen say we must sit down tamely with our thumbs in our mouths when gentlemen talk about the calamities of war? We have been threatened with the calamities of war---where are those calamities? I wish I was possessed of the language of the gentleman from Bedford (Mr. Todd,) and I would pay him in his own coin; but failing in this I shall not endeavor to make further remarks.

If I have shown, and I presume I have, that the court of appeal had no jurisdiction, I challenge them—I say, I ask by what authority the federal court had to proceed and draw out this money from the treasury? Was it not by force? I contend it was, by force of arms taken out of the treasury of Pennsylvania. The gentleman has forgot—this was no war I suppose. He says nothing of the horrors of war, of this judicial war against the state of Pennsylvania; he talks about the war, and hostility, and array of battle—but nothing of the marshal's authority being arrayed against the state of Pennsylvania—of this judicial war against the state, unauthorized by the judicial authority given them by the United States. He has carefully avoided the horrors of war, and arrays of battle, by the judiciary against Pennsylvania.

I ask, when had congress the right of reversing a decree of a court established by a law, passed by the legislature, under the sovereign power of one of the united colonies? They said an appeal should be to congress—but that a verdict of facts should be without re-examination or appeal.

But we are told that the jury were perjured—that they were villains; not in the same words, but that was the intention; that the court was in the same situation: they acted illegally as well

as the jury. Does not this look like this paper? [the "Aurora," which Mr. Tarr held in his hand;] to do away the little, petty state governments, tamely to submit and set down without murmuring.

I do aver, that there has not been one sentence shown to this house, to prove that the courts had the power to proceed against the state in this trial, the way they have done.

I am not for opposing the judiciary but where they have acted contrary to the constitution: it is not because they are judges, but because they have acted in such a manner, that I must declare my disapprobation.

This is called the governor's war—and the gentleman from Bedford (Todd), has said much about executive influence. I don't differ with him on that point; I believe executive influence is dangerous in society. I say if a majority vote for this they cannot all get into office. If fifty members apply, how can forty-nine get into office? I say if the governor appoints one out of fifty, forty-nine will go away murmuring—they will go conjuring up projects to be revenged. They consider themselves as well entitled as the other; and why there should be cause of complaint from that quarter I cannot tell. I hope the gentleman does not charge me with wanting an office—I never asked for any.

He said it was a pitiful position a member was placed in to declare that he wants no office. The gentleman has this frailty, and to day declared that he never asked any. I believe he don't want any; but I don't know positively but some of his friends may.

I stated before that there was a law approbatory of the governor's conduct; he was called upon by the law of 1803 to do what he did; and his conduct under that law ought not, nor never can be questioned. It received the sanction of his predecessor, and if the governor had the power of pronouncing a law unconstitutional, the object of all laws might be defeated.

We are asked the reason why these resolutions are brought up? But I ask why the time of congress has been taken up, uninterestingly, about Mr. Jackson and the conduct of the president of the United States? Why, sir, to show that congress approved of the proceedings, and wanted to pass a law declaring whether the conduct was rational, or honorable, or just. But this is not alone the reason with us. Rumors are abroad that Pennsylvania is hostile to the union; an insinuation unfounded, and unsupported, because the legislature is always ready to support the general government in wise, and just, and necessary measures; but not in assuming unconstitutional power.

I think proper to remark, that it has been the opinion of the legislature of this state, for upwards of 30 years, warranted by the United States' and state constitutions, and guaranteed by the state

of Pennsylvania, that congress possessed no such power. No instrument can be produced of any power possessed by them to reverse the decisions of the courts. Pennsylvania was a party before the court of admiralty, how could it ever be transferred to an individual. The treasurer could not give a bond, and divest the state of a right held, and by the decision of admiralty. I contend that congress had the power in no other manner, than so far as was given by the legislature, and by that act.

We are told about a total independence. Who has talked about a total independence? I never heard such a thing suggested, and I believe no member of this house wants any such thing. We are told about the consolidation of the states, but I can't think that any such thing is thought of. I believe our present president to be as great a patriot as general Washington was. I hope so at least. I believe at the conclusion of the war general Washington was offered a crown, as it is called, that is that he should be a king. A proposition of that kind was set on foot before the army was disbanded—but only a few could be found to advocate it. But general Washington spurned at such a proposition, and so would our president. I can't believe that the general government wants any consolidation of the states.

I believe there is danger to be apprehended from executive influence too extensive; but whether it has any effect on this house I can't say; but this I know, that those who have been disappointed in getting what they expected are the opposers of these resolutions. In two instances in the county where I live, persons disappointed in getting offices are totally hostile to the administration.

I cannot help remarking on what fell from the gentleman from the city, that congress had an admiralty jurisdiction prior to the year '75. If that gentleman had been in this country prior to the revolution, or if he had been attentive to history, he would have found that congress had not determined till '76 upon being independent. The hostilities could not have been in operation at sea at all, and there could be no occasion for an admiralty jurisdiction. The contest took its rise, if I am not mistaken, in the eastern states. Letters were sent from patriotic characters in the eastern states to their friends in other parts of the United States, stating the sentiments of the people as to respecting the encroachments upon their liberties. Nothing could be done as a public body—however an understanding did prevail, and delegates were sent without any powers to establish courts of admiralty or any thing, but to enquire into what was best to be done; and until November '75, nothing was done in this business, when congress seeing the propriety of establishing

courts of admiralty did recommend them to the several states—and under this recommendation did Pennsylvania establish her court of admiralty. I believe, sir, it is scarcely necessary to say any thing further on this subject, nor should I have risen but for the warmth, and the zeal, and the unfounded alarm of the gentleman from Bedford.

Mr. Thompson. When I find, sir, that so little could be said by the gentleman opposed to us on this subject I do not wonder that they are anxious to hurry it through, by the overwhelming power of a majority. Sir, I listened with attention to hear if the advocates of these resolutions could say any thing to support them; but instead of this I have heard nothing but attacks upon the gentleman from the city, and attacks upon the warmth of my friend from Bedford. But, sir, the gentleman has furnished no argument that can have any weight in this case. He boasted of his independence, and tells us that he never applied for an office, and I believe what he says on that subject is true. But, sir, is this any greater proof of patriotism than every man in this house ought to possess? For my part, sir, I never applied for an office, and I never will. I go further, and I assert that the man debases and degrades himself who applies for any office. He is unworthy of the suffrages of a free people; and when I can degrade myself by soliciting an office from the governor of Pennsylvania, I hope my constituents will spurn me from their confidence.

Mr. Bard. Mr. Chairman, as this is a new kind of logic, I wish to know how it applies to the resolutions before us.

Mr. Thompson. I intended to balance accounts with the gentleman from Fayette; and I go on to say that I expected something like argument in favor of these resolutions, which I consider as the prop to support a tottering executive—the polar star of the gentleman on the other side of the question.

By the second section of the 3d article of the constitution of the United States it is declared, that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction;" now after such ample power as is here delegated, are we prepared to say that the federal court had no jurisdiction in the case of Gideon Olmstead? The gentlemen on the other side wish us to believe so; because they say the constitution alluded to no cases previous to its adoption. But, sir, there can be no doubt but it did embrace all cases in dispute previous to the adoption of the constitution, as well as those that followed. The opinion of judge Tilghman on the subject, which I read this morning, ought to carry conviction to every man that is unfettered. He tells us, that the United States' court is the proper authority in such cases, that otherwise "all cases antecedent to the adoption of the

constitution would have been unprovided for"—and he says also, that he believed "this construction has universally prevailed."

But, sir, before we proceed to impeach the judges of the federal court by declaring their conduct to be illegal and unconstitutional, let me call the attention of gentlemen to another subject. Sir, on this very floor must the senators of the United States be chosen on the part of the state. These are the men who are to represent us, and to watch over state rights, and while we are represented in the general government let us not for a moment think of opposing the judiciary of the United States by a military force. Congress is created by the people, and are to watch over the people's rights. If a judicial officer acts contrary to his oath and his duty, the representatives of the people in congress have the right to bring him forward and prefer articles of impeachment against him; and the senators from every state are to sit in judgment upon him. Is it right—is it rational, when we have a constitutional remedy like this, that we shall sanction an appeal to arms against the proceedings of the judges and the judicial power of the United States? But, sir, it is useless to say any thing further—as nothing like argument has come from the gentlemen on the other side of the question; and as all our statements appear to be admitted, should we say any thing more it would look like triumphing over a conquered foe.

Mr. Bard (of Franklin). Mr Chairman, as I never had the honor of a seat in this house, until this session, I must confess myself considerably embarrassed; and notwithstanding I may not express myself as well as some gentlemen, from my not being in the habit of speaking in public bodies, I conceive it my duty to express my opinion on these resolutions; and in order to do it I will read the first.

"Resolved, that after most solemnly declaring their readiness, cheerfully to submit to all the legal and constitutional decisions of the federal courts, the house of representatives cannot but express their highest disapprobation of the *illegal** and *unconstitutional* conduct of the same, in the case of Gideon Olmstead."

This resolution appears to be bottomed on an opinion that the proceedings of the judges were illegal and unconstitutional. Under this view we must enquire, in order to get a fair understanding of the subject—"Was the proceedings of the federal judges illegal and unconstitutional, or were they not?" If they were illegal and unconstitutional, then the resolution is correct

* In our first publication of this resolution, the words *illegal* and *unconstitutional* were, by mistake of the compositor, made to read *legal* and *constitutional*.

and justifiable, and ought to be adopted. If not illegal and unconstitutional, the resolution ought not to be passed. In order to inquire into this business particularly we must proceed to consider from the commencement of the revolution. If the gentleman from the city had been in America at the time, he would have known that as early as the year '64 there was disputes between this country and Great Britain; but these disputes, shortly after, subsided. About '74 or '75 they began to break out, first at Boston. There was a disposition to resist, which increased every day, and at last blood was actually shed. In the year '76 the declaration of independence took place, by which we declared ourselves free and independent states, which are in these words:

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies, are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

Here, it would strike me, that at this time the respective states were absolved from all authority of the crown of Great Britain, and at this time there was no combination of the states into one government. There was no confederation of the states to justify the gentleman from Philadelphia in saying that all power was in the hands of congress. There was then no confederation, and when the articles of confederation were long afterwards adopted, Pennsylvania was declared a sovereign and independent state, in these words: "Art. 2. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in congress assembled." Thus, I take it for granted, that what the people of Pennsylvania did not expressly delegate was reserved to them. Previous to this, or about this time, the sloop Active was captured; a decision took place, and a share of her proceeds was adjudged to the state. In the year '79 the executive council, who had the disposal of this share of the proceeds, directed the money to be paid into the hands of David Rittenhouse the state treasurer.

The articles of confederation were proposed, but were not agreed to until the year 1801. [Mr. Bard should have said 1781.] The adoption of 1801 [1781] was nugatory as it related to any

power in Olmstead's case, because it had no force until it was adopted. Pennsylvania had complied with the recommendation of congress, and established a court of admiralty, and that court had finally decided the question by a jury trial. I can't conceive wherein the power of congress of judging in an appeal could be derived from. We had given them no power until we had adopted the confederation, and they had no right to interfere in the business. I wish to know if there is any thing in the articles of confederation, or in the federal constitution, [of which Mr. Bard read the 2d section of the 3d article,] to disannul and make void the solemn decision which had been adopted before the confederation had been adopted? Congress never had a right to repeal the decree of the court of admiralty. The judgment of judge Ross was binding and conclusive, and the committee of appeals never had any authority to examine it.

Although the state of Pennsylvania did agree to a tacit acknowledgment of this jurisdiction, in some cases, it never gave up its own rights. If any individual is summoned to appear before a justice of the peace, in a case where the justice has no jurisdiction, he may appear before the justice, but this is no acknowledgment of his jurisdiction. He may deny the authority, as the state of Pennsylvania has done, but his appearance before the justice could not operate against his rights. If I am wrong now, sir, it is an error which I have labored under all my life, until this very moment.

The gentleman from Bedford (Mr. Todd), has, with a considerable degree of ill-nature, undertook to impeach the motives of the committee who made the report. The gentleman from Bedford, although learned in the law may not be better able to judge of a subject of this kind than we are. He has never taken the trouble to see whether the statements of the committee are true or false. He seems to think them improper to be adopted, even if the federal court had overstretched their powers, or whether the money was rightfully or wrongfully claimed; because he says the money is now paid and the business is at rest. I admit, sir, that the money is paid. I admit that it is gone, never to return. Notwithstanding this it does not deprive us of the right of expressing our opinion on the subject. Will the gentleman alledge that if my property is taken from me, that I shall not only submit to the taking of it, but that I shall have my mouth gagged?—that I can't say it was a wrong act? Are we in the deplorable state that if we think we have been injured and ill-treated we can't say so? If we are in that deplorable state, it is high time to raise the alarm of state sovereignty being in danger. I still hope that this house is not afraid to give their opinions,

notwithstanding that judge Washington gave his opinion on the same subject.

This house, Mr. Chairman, are not all lawyers. They are not versed in quibbles, in tricks, and in shuffling. This house is chiefly composed of men capable of judging of plain facts, when they are fairly brought before them. I admit that we have not those tricks of sophistry that I presume the judges are versed in. But I presume they are plain men, capable of judging for themselves. The committee had the constitution and all the evidence, and all the papers before them, and they examined for themselves and were capable of judging what was right. If the gentleman from Bedford, therefore, would not make himself acquainted with the facts belonging to this subject, it is his own fault. He was a member of the committee, and had an opportunity of seeing all the documents. If the gentleman from the city, thinks that whom God intends to destroy, he first makes fools of them, and that he *has* made fools of them, and that this here report and resolutions is a foreboding of their ruin, it don't prove that they are so. The gentleman from the county of Philadelphia, has informed this house, that judge Tilghman's opinion was, that the constitution embraced all proceedings antecedent and subsequent to the time it was adopted. But I have seen nothing, that has been said on this part of the subject that has convinced *me* that judge Tilghman is right. I don't mean to give up my opinion to judge Tilghman's, unless I see what that opinion is bottomed on. I can't see that judge Tilghman's opinion is correct; because if Pennsylvania had submitted to such a construction, she must have given up her sovereignty; and I defy any gentleman in this house, to say that Pennsylvania has ever gave up her state sovereignty. I defy any man in Pennsylvania—I defy any man in the United States, to say that Pennsylvania has ever gave up her state sovereignty. I admit that being at war and in cases of great national concern, it is necessary to unite some powers of the state governments in one body for national objects. You may give them into the hands of a congress. You may call them a congress or a council, or you may call them arbitrators. The people might agree to place these powers where they please. It is just like that, when two or more persons agree to do certain things, they apply to a third person as their agent to transact the business for them. They may either agree to do this, or they may take their own course and do the business themselves. If all power was centered in congress, there would be no use for the state governments—but if all the power emanated from the people, congress could have no power but what was delegated to them.

The gentleman from Bedford has held forth an opinion that these resolutions were imposed upon this house through executive influence; and degraded indeed is the state of Pennsylvania if it is so; and a most contemptible opinion must he have of the committee if he thinks they would submit to any such influence. But that gentleman has no evidence nor proof for his assertion. Such a thing, sir, is not possible. This same gentleman was a member of the sub-committee, and he saw the resolutions after they were drafted. I say that after they were drafted this same gentleman saw them, and he was asked specifically if he had any objections against them. He said he had none—that he believed the facts to be correct—that if there was a disposition to adopt the resolutions, he didn't see why they should not be adopted.

But the gentleman from Bedford goes a little further. He alleges that some gentlemen retained in office, and others, are such perfect sycophants that they wish the resolutions to be passed in order to prop up the governor. He goes further. He deprecates the idea that our neighboring states will take when they behold these resolutions. But, sir, are we to be governed by the opinion of our neighboring states and thereby be prevented from doing what we believe right? Is this house afraid to pass these resolutions, lest they should declare war upon them? I trust not, sir.

What class of people is offended at these resolutions? Every gentleman in this house knows that there are a number of disappointed office-hunters, and also a few others who are constantly busy going through the city and through the streets and highways, to bring into contempt the present chief magistrate. But was this for any good purpose?—or for any good object?

What did the federalists say after the election of our present chief magistrate? Why that the disappointed office-hunters would raise a hue and cry against him, and endeavor to put him out, as soon as they would find themselves disappointed. But will any man on this floor say that there is any well-grounded charges that can be brought against him? Will any man say that the governor was wrong in complying with the law and acting as he did?—The man that would say so ought to be scouted at. I would scout at it, and contend that the man who would say it was wrong ought to be scouted at. The legislature when they passed the law of 1803, knew that the state had not delegated the power to congress to reverse the judgment of judge Ross and the order of the executive council. The law of 1803 explicitly states, that the governor shall protect the executors of David Rittenhouse from any process whatever, issued out of any federal court: and will it now be contended that the governor

was not right in complying with the provisions of the law? The gentleman from Bedford has acknowledged that the law was discretionary, and that he might act under it as he saw proper; if that be the case the governor ought not to be blamed for acting according to the discretionary power as he thought right. The gentleman from the county of Philadelphia says, the governor was authorized to proceed as he did; but the law never contemplated to use force. This is the logic of the gentleman from the county. That gentleman has also undertaken to read the documents, and it has been insinuated that some of these letters are not genuine—that there have been erasures made in some of them, and that the dates have not agreed. Now, sir, I assert that I have saw these letters, and I have no doubt of their being genuine. The mere mistake in a date was of such a nature as to be of no consequence to the state. I don't see that it was material whether the letter came before the house or not, as I don't see that it had any bearing upon the question. But the mere mistake of a date could be of no consequence.

I just state, Mr. Chairman, that I don't know that I have been so fortunate as to convince any gentleman on this floor who was opposed to these resolutions. But lest I have not, I think it proper to observe that these resolutions are correct; that the decision of the United States' court was illegal and unconstitutional; that the state of Pennsylvania, in September 1778, was a sovereign state—that the state of Pennsylvania had a right to adopt its own laws—that under its laws the case of Olmstead had been fairly tried by a jury, from which there could be no appeal. That all that congress could do was recommendatory. That the states had the power to fall in or reject; that they never gave up their state sovereignty; and when we refer to the constitution, and find the article expressly says, that the judicial power should extend to "all cases arising *under* this constitution," no one could suppose that it could have an operation upon any case antecedent to its adoption.

Mr. Cunningham (of Chester county), observed, that he thought the first resolution would be quite as expressive, and more dignified, if the words "illegal and unconstitutional" were stricken out.

Mr. Bard. As the gentleman is hostile to this resolution, perhaps it would be better to object to the whole of them at once. [Mr. Bard again read the first resolution, and observed, that if the words "illegal and unconstitutional" were stricken out, the resolution would be "nugatory and useless."]

Mr. Duane. Mr. Chairman, if this were a trivial subject, a question respecting a bridge or a mill-dam, I certainly should be ashamed to address you again; but, sir, the matter under consi-

deration is of great moment, and too much cannot be attempted to preserve our reputation as a state.

The gentleman from Franklin (Mr. Bard,) has asked—is it true, or is it not true, that the late decree, of the United States' courts awarding the money to Olmstead, was unconstitutional? Yes, sir, this is a question involved in the first resolution, and before he votes for this resolution, every member must determine upon the oath he has taken that the decree was unconstitutional. When I consider that we are all under this heavy responsibility, I cannot be too earnest in entreating gentlemen to reflect upon what they have before them. If any gentleman doubt on this question, they cannot conscientiously vote for the resolution; and it is therefore incumbent on them to use their influence to prevent its passage.

But there are other questions also, which each member must answer before he can vote for the first resolution, and among them—whether Pennsylvania was, or was not, sovereign and independent in 1776? I deny that this state was independent in the strict sense of the term, that it was independent of the controul of the people of the whole union—and if this has been proven, how can gentlemen pretend to claim what are termed state rights? But, it is said by the gentleman from Fayette, that, as I was born somewhere else, I can know nothing about all this: if the gentleman intended as a reproach, the circumstance of my having been born, and having lived for the first seven years of my existence, on that island, from whence even so many members of this house emigrated, he failed in all his purposes—for [Here Mr. Tarr interrupted, by saying that he had no intention to state what he had said, as a matter of reproach.]

Then, Mr. Chairman, if the gentleman did not consider a circumstance, over which I had no controul, as a reproach to me, and if he admits that I may be proud of the place of my birth, he must have meant, by what he said, that those only who were born in 1776 can know what then took place. That the gentleman was born at that time I presume, but that he had any better opportunities for deciding on the present question, I deny. As a representative of the people I stand here, and grateful for the honor, I wish to do my duty: I suppose the gentlemen from Fayette and Franklin have the same object, and therefore I challenge them for proof of their assumptions about state rights and sovereignty; I ask them, why the Pennsylvania constitution of 1776 was framed for internal and not for national purposes? I ask them why Pennsylvania did not fit out armies and fleets, or make captures? Why did it not erect maritime courts of its own? Why did the state appear before the congress court and plead as a party against Olmstead? Why did it not protest against the juris-

diction of the congress court? Why did Pennsylvania, when it was paying usurious interest for money, permit so many thousand dollars to remain unemployed in the hands of Mr. Rittenhouse? I wish gentlemen to answer these questions. I have called on them heretofore to do so, and I now ask this committee to mark their silence respecting them. Sir, it has been asserted, and with all the plausibility of truth, that Pennsylvania has invariably resisted the claim of congress to revise the decree of the state court; but this is wholly unfounded, as the fact heretofore mentioned proves. The state, in '78, pleaded, before the court of appeals of congress, upon the whole merits of Olmstead's case; the state consented, by its appearance and pleading, to the revision of the congress court; but, when the state found that it had not weight enough to put down a friendless individual, when it could not support the plunder of Olmstead even by plausible argument—then, and not till then, was any doubt urged as to the competency of the congress court of appeal—then commenced the usurpation, in contempt of the union, which we are now gravely asked to sanction not merely by our votes as men, but by our oaths as representatives.

Sir, the late decree of the court of the United States simply carries into effect what Pennsylvania herself, by her appearance, admitted, in 1778, that congress had a right to do—yet we are now asked to denounce the union, the constitution, and the courts, for carrying into execution what we all once declared legal.

But, it is said, that the passage of the resolutions before us will be resisting the judges and nothing more. Sir, are the gentlemen, who hear me, willing to be duped in this way? are the prejudices of gentlemen against judges and lawyers so strong that they will permit their judgments to be led captive in this manner? Not for the world, say gentlemen, would we infringe the constitution, and we are too good republicans not to be friendly to the president, Madison—all this sounds very well abstractedly, but I say that it is either sheer hypocrisy, or founded upon the most unfortunate ignorance of the nature of our government and institutions.

President Madison, Mr. Chairman, has told the governor in his letter, that he was bound by the constitution to carry the decree of the United States' court into execution; is any further evidence necessary? is it not plain to every mind, that, if we resist the decree, we shall be opposing the constitution? Yet, evident as this is, certain gentlemen are for approving the violent measures taken by officers in violation of the very oaths which they so lately took in the presence of Heaven. And this is the more extraordinary, as Pennsylvania has not a single document in support of her claim, and as all the rest of the union, all the

judges of the United States, all the presidents, and all the judges even of the supreme court of Pennsylvania, excepting Mr. M'Kean, have been opposed to our state usurpation.

Sir, I make no doubt, but that, as these resolutions were introduced for the purpose, they will flatter the vanity of the governor, or at least enable him to bear with more composure the weight of responsibility under which he totters: as an electioneering measure they may answer a present purpose. But on the other hand, have gentlemen considered the certain consequences, of such resolutions as these, to our republican institutions? have they reflected that, even by this discussion, we are bringing republicanism into contempt? How often have we been told of the inability of the people to govern themselves? Then, sir, let me ask, is this the way to rebut the calumny? is this the mode by which we shall put down domestic treason or appal foreign incendiaries? No, the resolutions before us will be a source of gratification to our enemies—they will confirm their predictions. And, indeed, the gentleman from Fayette disdained to mince the matter, for he told us, as an excuse for resorting to the bayonet, that proceedings in courts were tedious, and that impeachment was useless.

Why such monstrous doctrines as this are received with apathy in this place, I cannot tell, but they make me tremble for the commonwealth: we have courts always open, we have funds to support suits, we have honest jurors to try, and we say we have an honest cause, yet we refuse to enter those courts! We have a constitution providing barriers against encroachment, and a tribunal to try by impeachment; but all these are disregarded, as if we were under a despotism, and the means of a despot, the bayonet, are alone resorted to by us, who prate so much about our democracy!

Sir, when men living under our system, abandon the constitution and law and take up the bayonet, the public liberty is in danger—in the hands of those who lately held it, the bayonet could not indeed be terrific, but it might become so when raised by men of better abilities, and therefore we should mark with scorn those dupes who showed themselves to be prepared for "any orders that might be given." Instead of voting approbation to those, who drew the sword from the scabbard, we should expel them from all confidence. "If," says the respectable judge Tucker, in his notes to Blackstone, "an officer concurs in an unconstitutional act, he is guilty of usurpation, and contempt of the sovereign authority, which has forbidden him to pass the bounds prescribed by the constitution. He has violated his oath and the most sacred of all duties. To omit him at the next election is not an adequate punishment for such a crime. Abuse of

power is despotism, and the democracy, that does not guard against it, is defective."

Yes, sir, if in our democracy, we permit men to trample upon the constitution, under pretence of resisting judges, we lay the foundation of its ruin. If instead of punishing the violators of the constitution and of their oaths, we denounce an essential branch of the general government, omission at the next election will not be an adequate punishment for us. We have already had two insurrections in Pennsylvania among the people; but they were insignificant and harmless when compared with the organized and armed treason of the last spring; they never were considered as dangerous to the perpetuity of the union or of our own liberties, but the late resistance at Philadelphia made every friend of freedom tremble—the deluded authors of the popular commotions were punished, but we are now asked to declare that the recent treason was laudable, and that the duped leader of it deserves a crown of laurels! As if we were not ridiculous or contemptible enough for all this, we are even in this legislature denouncing the proceedings of Massachusetts, and what is still more extraordinary, the gentleman from Fayette tells us, that one of his objects in supporting the resolutions on your table is to silence the rumor that Pennsylvania is disaffected to the union. Some gentlemen, in the course of this debate, has mentioned the late general Washington, but it is very evident, that he does not thoroughly understand, or value, the precepts of that friend of his country. Speaking of the union, or of the unity of government, in his farewell address, general Washington said, "As this is the point in your political fortress, against which the batteries of internal and external enemies will be constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness, that you should cherish a cordial, habitual, and immoveable attachment to it; accustoming yourselves to think and speak of it as the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

These, sir, are the sentiments of that venerated man; the whole of his address shows his apprehensions of divisions, not a sentence does it contain relative to a consolidation, so much apprehended by gentlemen in this house—and with reason, as I presume, for a consolidation is the last danger we have to dread;

a severation is much more likely, especially if we approve such disorganizing schemes as are now agitating.

I have now merely to remind gentlemen, that whilst much mischief must follow the adoption of the resolutions on your table, not one good effect can possibly be produced—that the rejection of them must be honorable to this state, and beneficial to the union, without producing a single disadvantage; and that, as no public object was to be gained by their passage, we ought not to pass them merely to gratify an executive magistrate.

Mr. M'Kinney (Northumberland). Mr. Chairman, I am certainly of opinion with the gentleman who made this amendment or offered it, that he would not vote for these words "illegal and unconstitutional," for nothing has been said on this floor that has convinced me that these words ought to remain. For my part I am not able to say on the oath I have taken to support the constitution of this state and the United States, I am not prepared to say that the judges have acted illegal and unconstitutional—I have made an amendment—I don't know whether it will go on, or not, but I will read it. [Mr. M'Kenny here offered an amendment which was afterwards withdrawn.]

A motion was now made for the committee to rise. It was opposed by Mr. Thompson, who thought that after the arguments that had been delivered this day, at least one day might be given for the committee to rise.

Mr. Brown (of Greene), said he could'nt see the reason why the committee should not rise. It must be known that the same ground could be travelled over in the house. If gentleman are for the resolution, let them say so—if they are against it, let them say so: they will have an opportunity of speaking on it when it comes before the house. For my part I don't know that I shall say any thing. Perhaps I shall say something when its before the house. I shall reserve any thing I have to say till then. But I don't know that I shall say any thing.

The *first* resolution being agreed to, the committee proceeded to consider the *second*, [see page 77-'8.]

Mr. Duane thought this resolution useless and unnecessary. He should however vote for it. No gentleman in the legislature could be opposed to the sentiments it contained. But there was no use in passing a resolution of this kind, when it was totally unnecessary, except as the gilded leaf that covered the poisoned pill of the whole resolutions.

The second resolution was adopted; also the third.

The fourth being under consideration, Mr. M'Kinney objected to the words "illegal and unconstitutional," upon the same ground that he opposed their adoption in the first resolution.

The fourth resolution was agreed to 53 to, 37.

The fifth being under consideration,

Mr FRAILEY said: Mr. Chairman, I have not troubled the committee on this question; but as there are a number of members who were last year also members, I conceive this resolution would place those gentlemen in a very awkward situation. They are advocating their own conduct of last year, which I think is a singular mode of legislation. I merely mention this circumstance for the consideration of gentlemen. Perhaps I may go more at large when the resolutions come before the house.

The last resolution was adopted, 53 to 38.

The preamble being under consideration.

Mr. LEECH proposed and obtained an amendment, "in that paragraph where it speaks of the time the governor communicated the information he had received from Philadelphia," to make "*had made* arrangements," read, "*was making* arrangements." [See page 77, line 15.]

The preamble was agreed to, as amended.

[Mr. THOMPSON here made some ludicrous motion, which the reporter could not distinctly understand.]

Mr. BROWN (Greene). The gentleman from the county certainly don't consider the situation in which he will appear if his motion should be adopted. That gentleman appears generally correct; but I believe this afternoon he has taken leave a little of his senses.

Mr. THOMPSON. If I had any more sense than I was able to make use of, I know no man who stands more in need of it than the gentleman from Greene.

The SPEAKER now resumed the chair, and the chairman of the committee of the whole (Mr. PIPER, from Bedford) reported the resolutions agreed to without amendment, and the preamble as amended; which were read and laid on the table.

The house adjourned.

FRIDAY, FEBRUARY 2. 1810.

On motion of Mr. Bard, seconded by Mr. Todd, the report of the committee in the case of Gideon Olmstead, was read a second time, as reported by the committee of the whole on the 31st ultimo.

And the first resolution, in the following words, being under consideration:

"Resolved, that after most solemnly declaring their readiness cheerfully to submit to all the legal and constitutional decisions of the federal courts, the house of representatives cannot but express their highest disapprobation of the illegal and unconstitutional conduct of the same in the case of Gideon Olmstead."

A motion was made by Mr. M'Call, and seconded by Mr. Marks, to amend the same by inserting between the words "*of the*," in the fourth line, these words, "*what they conceive to be.*"

Which was agreed to.

Mr. Thompson. The resolution with that amendment is not much bettered. I consider the principle the same. I believe the gentleman from Northumberland as well as many others, I hope, cannot reconcile it with their consciences to vote for this resolution; because if the gentleman is not prepared to say on his oath that the supreme court of Pennsylvania has acted illegally and unconstitutionally, he cannot conscientiously vote for it.

Mr. Tarr. The gentleman from the county of Philadelphia (Mr. Thompson), voted last year for a similar resolution. How he can get over it this year by voting for a different principle, I am at a loss to know. The members in this case, as in every other case, are called upon to give their vote according to their judgment, and if they vote wrong, it can be no more than error of opinion. I am informed, that the gentleman from the county of Philadelphia, as one of the committee formerly appointed on the application of Gideon Olmstead, voted in the committee against his claim. I should like to know how the gentleman is to reconcile this to his conscience. Besides, I know that reports have been circulated that the committee declared that Olmstead's documents did not warrant his claim.

Mr. Thompson. As the gentleman collects his information from scraps of newspapers and information of certain persons on this floor, it is not surprising that he should be very often wrong. I will put him right in the present instance. My conduct, sir, has been uniform in the case of Olmstead. I had the honor of being on the committee to whom his claim was referred. I thought then that he had little to expect from the legislature, and I well recollect that I expressed myself in this way, in the committee. I said that I thought it was not the business of the legislature, that it was a judicial business; and I said let him go to the proper tribunal, the judicial court. I thought this would be his best chance of obtaining justice: because the preceding year his claim had been rejected by the legislature.

A motion was now made by Mr. M'Kinney, seconded by Mr.

Lobingier, to postpone the first resolution, together with the other resolutions and preamble, *generally*.

Mr. Thompson hoped the motion would not prevail. He hoped that such truths had flashed upon the minds of gentlemen in the course of the debate on this question, that a sufficient number were convinced, to enable the house to go on and negative the whole mass of absurdity.

Mr. M'Kinney. I do think, Mr. Speaker, that we are carrying this business a great deal too far. I think we are getting seven times hotter than we need to be: There's a great deal of animosity a springing up, and I can't see how it will end, if we go on in this way. For my part, Mr. Speaker, I can't say that I know much about this business, but if I understand any thing of it, the case of Olmstead is settled and the money paid; and I don't see what we have to do with it. I think the best thing we can do, is to postpone the business generally. At least that's my opinion. If the members of this house is so well acquainted with the laws of this state, and the laws of the United States, as to say that the conduct of the judges is illegal and unconstitutional, then it's well enough. But for my part, I don't allow myself to be a judge of such business, and I'm not a going to say on my oath, a thing I an't sure of. I know there is another tribunal, where we shall be brought to a more serious account than here, and where we must all give an account of our actions. That will be on the final day of judgment.

One reason, Mr. Speaker, why I can't vote that the judges of the United States court have acted illegal and unconstitutional, is this: It is true the court of admiralty did award the money to the others and to the state; but I do believe from all the documents I have ever read, I thought that Olmstead ought to have the whole of it, and so long as I think Olmstead ought to have the whole of it, so long I can't think the judges acted illegal and unconstitutional. This state ever since it was a commonwealth, allowed an appeal from the trial of the first court. I know from my own knowlege, that this is the case. And haven't we now an arbitration law? and don't we allow of an appeal in all cases, if any of the parties ask for it? And what does that appeal say? Why go to the court. Let them settle it, and if they give judgment against you, then you must be satisfied with it. An't it as likely that arbitrators should decide right as jurymen? and yet the law allows an appeal from the arbitrators, and I think its no more than right. I must confess that law is a lottery upon the whole, with what little I have had to do with it.

I have taken an oath, Mr. Speaker, to support the constitution of the United States as well as of this state, but even if I ha taken no oath, I should think myself bound to vote as I think

right; and I think the constitution of the United States gives power to the federal courts to settle this business of Olmstead. While I believe this to be the case, I can't give my vote for saying that the judges have acted illegal and unconstitutional.

What did the legislature do last year, Mr. Speaker? Why they applied to the other states to join them in getting the constitution altered, so that there should be an impartial tribunal appointed. And do they concur with us? No, they do not. They think it of too small a moment to concur with us; and why don't our sister states concur with us? Why because they think the constitution has provided a tribunal sufficient enough, and that is the United States' court.

I hope, Mr. Speaker, that this house will agree to postpone the business generally. I should wish this house to think seriously of their oaths and what they are a going to do, and I hope they will do honor to themselves by voting to have done with this business.

Mr. Todd. Mr. Speaker, wishing, sir, to give some answer to a few remarks that have been made, I may first be permitted to express my astonishment that gentlemen speaking in favor of these resolutions have not attempted to give something like a reason or an argument for their adoption, something to show their utility, or any purpose under heaven that they are to serve. One gentleman only, the gentleman from Fayette (Mr. Tarr), has condescended to let us know his object in voting for them, which is, to contradict the rumors which he understands have gone abroad, that the state of Pennsylvania was hostile to the union. If the gentleman's object is to refute such rumors it will be hard for him to show that he has not taken a most strange and unlikely mode of contradiction. Let him have that motive inserted in the preamble and try how it will sound.

It has been shown that the question we are now debating was decided and put an end to by the law of last session, appropriating money for the satisfaction of that same judgment of the federal court which is here to be declared null and void—yet not a word has been attempted to excuse the absurd and disgusting affectation of bringing forward our state claim to a sum of money, after having given it up by a solemn law; or to palliate this wavering, crooked, irresolute, creeping, blustering policy of surrendering our property first, and then affecting to retain the right—as if our antagonists would care what we may say about the *right*, after they have received from our hands a surrender of the *thing* they demanded.

The inconsistency of attacking the federal judges for an opinion on the meaning of the constitution, while we pass by in silence the same judicial opinion given by our own chief justice, has been point-

ed out, without any thing like an attempt at an answer—and not a breath has been uttered in defence of that resolution of thanks to the president of the United States ; nor an effort made to clear away the meannes of this pretended gratitude for the mitigation of a punishment imposed, as we assert, by usurpation ; nor any attempt to hide the deformity of our thus ascribing to the president, by way of applause, a motive for the pardon directly the contrary of what he has avowed. But, sir, the gentlemen do not want language—they have words enough, and speeches enough —the fault is in the matter—nothing, it appears, can be said, by way of just argument in favor of these resolutions.

It must have been observed that the gentleman from Franklin (Mr. Bard,) wisely abstaining from the subject in debate, has employed his ingenuity upon attornies, sophistry, tricks, and so on. I am not here to defend attornies; if we are to take the gentleman's definition, he has shown that a man may be an attorney without being admitted at the bar ; for if I mistake not, it might be easy to point out and specify in him many instances of that very sophistry which he, in general declamation only, without proof, charges to others. But I suppose our votes are to be given upon the resolutions, not upon the speeches either for or against them ; and gentlemen ought not to conclude that every cavil, unconnected with the subject, because it is unanswered is therefore unanswerable. I, for my part, have already absurdities enough on my hands in these resolutions.

A question has been asked by the gentleman from Franklin (Mr. Bard), which ought here to receive an answer; not because it is, to use his own phrase, mere sophistry, but because it materially affects the honor of the legislature. Says he, " What, because the money is now gone, because it has been wrested and forced from us, shall we not now protest ?" Inconclusive as is this mode of argument, it is no less contumelious ; for every one knows the money was paid in pursuance of an act of the legislature; and in the preamble, that very judgment of the federal court was mentioned, not as an act of corruption and usurpation, but in the most respectful language, and was given as the reason for paying the money. Now to assert that our legislature has acted under the influence of force and terror, degrading as it is, is nothing compared with the charge of their having spoken with the utmost respect in that preamble of a decision of the federal court, which they knew to be void and iniquitous. And even that is not equal to the disgrace of being called upon now, " when the force is removed," when the marshal has no longer a writ in his hands, to retract, and to speak out our real sentiments.

I have attacked this house, says the gentleman from Franklin,

and have charged them with having these resolutions crammed down their throats by executive influence. That was not my language; though what I have actually said I shall not endeavor to explain away. I said that a deadly corruption appeared to be seating itself on the vitals of the commonwealth, and that a hitherto unheard of rapacity for office, and for executive favor, was likely to root out every principle of political virtue from among so many of our leading men in the democratic ranks. And I say now, this office-hunting democracy, which can only be maintained and fed on the people's money, is not a democracy worth having. Nor is the gentleman to persuade me that executive influence is such a trifle, or that no difference appears between democracy in power and democracy out of power. I hope I am not to be called to account for saying that executive influence may bear upon this house; and I trust it is not the case yet that the only freedom of speech to be allowed here, is to applaud the executive, or the office-giving department of government. Is not this Olmstead question in some degree personal to the executive department? Have not executive officers interfered beyond the requisition of any law, and beyond the line of their official duty? Have we not heard of double correspondence, double sets of letters; one for actual use—to direct, to instigate, to inflame; the other for show and for justification? And are we bound to believe that this private correspondence must be confined altogether to brigadier generals?

A remark which fell from the gentleman from Fayette, (Mr. Tarr,) ought not to pass unnoticed. He informs us that through his influence, small as he declared it to be, the member from the city, (Mr. Duane) was saved from being brought to the bar of the house and expelled. I have indeed a curiosity to know where this influence was exerted; where this inquisition was held; who presided; who directed; under what part of the constitution was this new court convened to dispose of the representatives of the people? [Here Mr. Tarr explained, that there was no such court, nor inquisition, nor had he so said; that he had only stated a design to bring the member from the city to the bar of the house, but that he had said nothing of expulsion.] Agreed; but let me request of gentlemen as a special favor, that if they shall happen to have a similar charge against me for non-conformity, they will make it publicly, and let me understand the grievance complained of before they proceed to condemnation. On this head gentlemen will permit me to remark, that freedom of debate is a very useful thing, I mean to the people. It is for their interest that every thing unsound or doubtful in the state should be searched and exposed. The people are not so very anxious that all their representatives should be what

are called governor's friends and favorites, and followers of the current. True, such unanimity and implicit obedience to a chief might occasion very quiet times, but it might be a dead and dangerous species of tranquility, and productive of much irremediable corruption. Let us in debate keep within those bounds of decorum necessary for the transaction of business; but not take fire at every passionate and heated expression. A sarcasm or an argument, because it cannot be answered, ought not on that account to be revenged by a vote of expulsion. If my humble advice may be offered on this subject, the best and safest plan, perhaps, would be to allow, on the one hand, great latitude in debate, and on the other, to be extremely rigid and scrupulous in our legislative acts and votes. But gentlemen seem to wish this rule reversed. They are for holding us to the nicest punctilio in speaking, while in our resolutions they are for carrying us to every pitch of violence and extravagance.

I have been sorry to hear it pronounced in so very positive a tone, that the only opposition to these resolutions proceeds from disappointed office-hunters. It is really deplorable that gentlemen, upon consulting their own breasts, cannot feel how possible it is for a member of this house to form and to advocate, without any private motive, an opinion on a question involving the interest and the honor of the state; and that they cannot see in these resolutions something which an honest man might vote against without the impulse of personal resentment. But gentlemen may be assured, that in thus arguing upon maxims aud data which appear so familiar to them, they are quite mistaken in matters of fact. Some of us, I am completely sure, and all of us perhaps who have hitherto voted against the resolutions, having never had the honor to ask or expect an office from the governor, could not possibly have been disappointed.

As to the resolutions of the last session, gentlemen in adverting to them seem determined to forget the immense difference between those resolutions and these, and the still greater difference between the occasion and the circumstances then and now; and that one reason only, if there was no other, will show those resolutions can be no possible authority for the present, but directly the reverse: because the ground then taken of the federal court being forbidden by the amendment to the constitution from carrying into effect the decree of the old court of appeals in Olmstead's case, this state being interested in the question, that ground was afterwards abandoned by us by a law of the same session, reciting that very judgment of the federal court and providing for its payment. To retract our admissions, even though we were to regain our money by it, would appear undignified; but to do so when we are to gain nothing and to serve no pur-

pose whatever by such retracting, except that of condemning our own previous conduct, and showing a timid wavering system of policy, seems to be not only idle and useless but disgraceful.

Those resolutions were not stuffed with any of this nauseous adulation of governors or presidents; none of these splenetic, virulent charges of sophistry and corruption. They did not arrogate to ourselves the exclusive right of determining the cause. They proposed the erection of an impartial tribunal. They were in language fit for a legislative body to use. They contained nothing insulting, nothing peevish.

Some gentlemen who have spoken for the resolutions, have seemed to admit that Gideon Olmstead, as captor of the British sloop, had a right originally to the proceeds of the prize: and indeed I am inclined to believe, if that question, together with the validity of the decision of the old congress on the subject, could be brought before us, unconnected with the late proceedings of the federal courts, a great majority of this house might incline to the belief not only of Olmstead's right originally, but of the legality and justice of the proceedings of the old court of appeals.

But the gentleman from Fayette (Mr. Tarr), seems of opinion, not only that the old congress were a body of usurpers, as bad as the judges of the federal court have been since, but he has attempted to show that Olmstead's claim at first from the very foundation was frivolous and unjust. To prove this the printed evidence in the case has been referred to; from the whole of which, on the contrary, I think I may venture to conclude a majority of this house will be of opinion, that, in plain matter of fact, Olmstead was he who took the British vessel, at his own risk too, altogether without the help of captain Houston, or captain Josiah, who probably at that very time were along side the Philadelphia wharf.

But we are repeatedly told "*hostilities had not ceased.*" Indeed! do gentlemen intend to show us any rule of maritime law which requires that in order to make a capture complete the prisoners must be put to death? They certainly held their lives at the mercy of the conqueror. The Englishmen, huddled and boxed up in the cabin, with cannon and swivels pointed upon them from above, the very smoke of which could have stifled them, and compelled them to unwedge the rudder in order to avoid instant death, can not be said to have been subdued! O! but they were resolved to set fire to their powder and blow themselves out rather than be brought into an American port, as some of them, afterwards in their affidavits, on the trial, swear was their determination. And, indeed, if they as prisoners had been destined to the place Olmstead was bound to, the Jersey prison-ship, such might have been a very sensible plan. But it appears rather farcical to talk of their

affidavits of suicide, in preference to captivity among people as generous to their enemies when subdued as they were formidable to them in arms. After all, what completer conquest can be imagined than of men, who, by their own confession, had no means to escape except by cutting their own throats?

Here then was Olmstead with his prisoners and his ship, not only within sight of land, but almost sailing into the harbor; safe from enemies, but not out of the reach of friends. He is boarded by captain Houston, dragged and forced from his prize, which is brought into port, where Houston has the face to claim the whole for himself and his partner captain Josiah; a captain whom, by the way, we can scarcely hear of in this business, except when the booty is to be divided. The jury were not for going the full length of Houston's demand—giving him and his partner the privateer three-quarters; they left one quarter to Olmstead.

I have nothing to say against the verdicts of juries; but those who rely so confidently on that verdict, ought not to forget that there has been a second verdict of a Philadelphia jury against our state right, affirming the proceedings of the federal courts, and convicting the state agents for resistance to those proceedings. Of these two verdicts I set one against the other and leave them. Olmstead appealed. To what tribunal? To no less a one than the old continental seventy-six congress: and first by their committee of appeals the decree was reversed, and the whole prize awarded to Olmstead as the captor. But when the state of Pennsylvania, being equally interested with Houston, entered her protest, the question was brought before the whole congress, and their peremptory decision upon the merits of the cause will show, as well as the declaration of independence itself, what sort of men composed the old congress. The parties in the dispute before them, were, on one side the great state of Pennsylvania, upon whose zealous co-operation and perseverance in that most critical period of the war, so much depended; on the other, a sailor just escaped from captivity, from whom there could be no danger of protest or resistance. But, sir, with their eyes fixed upon nothing but the rules of justice, without bending to any exigencies of the time, without any equivocation, or any of those shuffling artifices, which by a mixture of timidity and virtue, are resorted to by men less firm, they proceeded at once to give their judgment directly against the state of Pennsylvania, and in favor of Olmstead.

It is asserted, that the congress had no jurisdiction in the cause. That point has been very fully, and to my apprehension, very satisfactorily discussed by the gentleman from the city (Mr. Duane)—that the resolution of the congress for the establishment of admiralty courts, provides for an appeal *in all cases*. An act of assembly in pursuance of it granted an appeal *in all cases*, with a

proviso that facts, *found* by a jury, should not be *re-examined* on appeal. Then admitting, if gentlemen please, the validity of that proviso, though variant from the resolution of congress; yet in Olmstead's case the jury found no facts, nor did they mention upon what they rested their opinion; nor state what evidence they believed, or what disbelieved; but they undertook to decide and confound both fact and law by a general verdict. Now it is impossible for one moment to suppose that the state law intended to grant an appeal *in all cases*, at the same time leaving it to be granted or refused at the discretion of the jury, from whose real or supposed injustice the appeal was to be.

As to the question which has been asked, what authority had congress to pass such resolution? We may as well be asked, what authority they had to make war or peace? It is not on parchment only we are to look for their commission. Their duties and their powers were for the salvation of the country, founded subsequently on the articles of confederation, but at first on the acquiescence of the states, on the confidence of their constituents; a confidence which in perilous times is placed in wise and brave men by a magnanimous people. Do we ever stop to enquire what authority that assembly had to pronounce the declaration of independence? Congress conducted the war, managed all foreign concerns; and in the nature of things, from the power of war and peace in any nation, a controul by appeal, or in some other way, of maritime decisions, must be inseparable. It was necessary to preserve neutrality, to prevent or redress injustice done to foreign nations, and to encourage the spirit of maritime adventure, and to redress the injustice which individuals might suffer from the narrow interested decisions of partial, prejudiced, local tribunals.

But admitting all this, it is said that the jurisdiction of the federal courts is yet to be made out; and that though forbidden by the amendment to the federal constitution, they have undertaken to decide a cause in which the state of Pennsylvania was directly a party in interest. The least consideration will suffice to show that in this very case, this ground has been abandoned by ourselves. When we by a legislative act, reciting that judgment, have admitted its validity, by providing for its payment. Another consideration should withhold us from making a useless, bustling protest, now in contradiction to our own acts; we have in a manner appealed to the other states of the union, and referred to them a question of state rights, in maintaining which inviolate, they are as much interested as ourselves. But they, as far as we have heard from them yet, have decided against us unanimously. I for one, not laying any claim to infallibility, am content: and trust others should be equally so to yield to the

authority of the whole union, legislative as well as judicial, and to withhold the assertion of a claim, which has been abandoned by our own legislature, especially when the empty, noisy assertion of that right by words, now can only amount to a confession of the want of nerve to defend it; and when the more completely we should succeed in establishing it; by so much the more completely should we condemn the last legislature for its abandonment.

There is one remark more to which I would call your attention. It fell from the gentleman from Fayette (Mr. Tarr.) He appears to be dissatisfied, that owing to the base desertion of state rights by the citizens of Philadelphia, more effectual opposition was not made to the marshal of the district. I do not know that the gentleman really intended to express his sorrow, that the opportunity was lost of settling this contested point of the constitution, by force of arms. But if he did, he thinks too lightly of civil war, and of the effusion of the blood of citizens. War against enemies is not the greatest evil; but war with our fellow citizens, is the worst of all calamities. The slaughter of thousands of men, in a national cause, could not produce that alarm throughout America, which would be excited by the murder of one citizen in a factious quarrel for supposed state rights, to settle the disputed meaning of a law, or of a phrase of the constitution. If we must have war, let it be when we are sure we have justice on our side. And I much doubt, if there is any gentleman here so perfectly convinced of the justice of our own decision in our own favor in the Olmstead case, as to be willing to risk his life in a conflict, to support it by arms.

Then, sir, as the motion now before you, for a general postponement, will, if successful, tend to put this whole question just where it ought to be, in oblivion, I shall give it my hearty affirmative.

Mr. Duane. The question now is, whether the resolutions shall be postponed generally? and as the gentleman from Fayette (Mr. Tarr,) entered again into the merits of the whole case, I might take the same liberty. It is not, however, necessary to do so; I will confine myself to some remarks upon those particular passages of his discourse, which were calculated to mislead the judgment of the committee. As for the zeal, which the gentleman has shown, I give him so much credit for it, as it deserved by those who act, like general Bright and his men, from a mistaken sense of duty; and this is certainly quite as much as he has a right to expect from a person, whom he has treated most illiberally.

It must be known to many who hear me, that none of the gentlemen, who advocate these shameful resolutions, have given

them that substantial support, either by argument upon the facts or by the introduction of documents, which, it is supposed by many deluded persons, might have been given. The support given, consists of bare assertion, and ridiculous declamation about sovereignty, independence and state rights; and if the honor and principles of this great state are to be judged of from such absurdities, we cannot but be regarded with contempt by our neighbors.

The gentleman from Fayette, indeed, has appeared to labor amidst this difficulty; he has ventured to read in one or two large books, notwithstanding the contempt in which books are held by many of his friends; but we shall find that this labor has been productive of such evidence only as proves the singular weakness of the ground which has been taken. The gentleman adds, with an air of triumph too, "show me any written compact between the colonies?" Is it necessary to say more on this point than I have said already? is there a gentleman, who hears me, that believes that the revolution of '76 was less glorious and important, because those, who produced it, acted merely upon the voice of an injured people and the instructions of the individual colonies? I am sure there cannot be one affirmative answer. But the gentleman has said a great deal about the powers delegated, and has called congress a mere colonial committee, appointed to report the resolutions of the several colonies; all this may be very fine argument in the minds of some gentlemen, but to me it is idle declamation; it proves that the gentleman himself, although he was born at the time, and says he has read history, has yet to learn the nature and progress of the American revolution. Sir, I have said heretofore, and I say again, that the *people* of the colonies formed a supreme council for all national purposes; that the congress were not restricted as to the means to be adopted, and that on all occasions an immense majority of the people approved and applauded the proceedings of that glorious band of patriots. Now, how has this been answered? in a way, that is remarkable only for its whimsicality: the gentleman read the oath taken by members of the legislature of this state, in 1776, and then ranted about what had nothing to do with the subject: because the members were not bound, by that oath, to support a constitution, which we all know had no existence, he would have us infer that the state was sovereign, and that Pennsylvania was not bound by the acts of congress. Very unfortunately for the gentleman, this oath taken in connection with the constitution, which the members were enjoined to support, proves: 1st, that Pennsylvania did not pretend to be sovereign, and 2dly, that the oath related to the exercise of state or colony duties only. The 3d article of

the constitution of Pennsylvania, of 1776, is in these words, in substance :

"III. The people of this state have the sole, exclusive, and inherent right, of governing and regulating the *internal* police of the same."

And now let me ask, if Pennsylvania was independent, would it not have had external as well as internal concerns to attend to? if it was not dependent upon and connected with the union, would it not have recapitulated sovereign powers in its constitution? would it not have asserted the right to levy war and conclude peace? most assuredly it would. So that the very instruments, which the gentleman has attempted to use, have contributed to drive him and all his friends from their untenable position; not one act of Pennsylvania exists, to show that the people at any time considered themselves the citizens or subjects of a distinct nation from that of the whole union.

But, says the gentleman, here's an article of the confederation, and it is now an article in the constitution, guaranteeing to each state its sovereignty, freedom and independence, and every other power, not delegated to the union. Here two questions present themselves, 1st, what is the meaning of the words *sovereign*, &c. in this article? 2d, was the right to reverse appeals delegated to the union? The object of the revolution, the history of it, and the constitutions of the union and of the states, reply to the first question--that the sovereignty and independence alluded to, mean the right to regulate state or internal affairs only: the answer to the 2d question, that both confederation and constitution gave the union the power to decide in all admiralty cases, whether tried by jury or otherwise, proves that the exercise thereof necessarily belonged to the union, and was so considered to belong by the people.

The gentleman from Fayette next said, that Pennsylvania had established courts. I ask what courts? did she ever erect an admiralty court without the consent of congress? if she did not, what are we to infer? surely, that she had not a right to do so.

I presume the gentleman will admit that the people of Pennsylvania were not barbarous in 1776, and that if captures were made trials should follow. The necessity for an admiralty court, therefore, must be acknowleged: and as no such court was established by the state, except under the direction of congress, I ask the gentleman if this weapon also has not been turned against him.

He has said, that, prior to the confederation, congress had no right to take any step, unless instructed by the colonies: I deny this, and shall presently show the assertion to be absurd; but, let us admit it to be a fact, and what does it prove? unquestionably,

that, as congress in 1775 asserted a right to decide upon appeals from state admiralty courts, as congress did so decide, and as but one or two states objected, the right was granted to them by the states or colonies united. The very resolutions of congress, to which such exception is now taken, were, according to the gentleman's own position, the act of the individual colonies. But, the statement is as incorrect as the practice would have been pernicious; and indeed I am astonished to find that gentlemen, who pretend to know so much of the history of their country, should with grave faces, give utterance to an assertion, which every page of that history contradicts. The journals of the state, as well as those of congress, prove, that the powers granted to congress were general and for general purposes; the nature of the contest and the existence of a revolutionary war, rendered the exercise of absolute power for national purposes absolutely necessary—and fatal indeed would have been the consequences, if congress had been obliged to consult the colonies individually on important measures, at such a crisis.

The gentleman from Fayette has also read to us an address from congress to the city of London, dated July 1775; and from this he has endeavored to show that the colonies were not independent, and that of course congress had no right to exercise sovereign powers. In the first place let me remark, that, in the address congress style themselves the delegates of the people, not the delegates of the colonies as such. If, sir, it were true, that congress had no right to exercise sovereignty, it must follow that the power of Pennsylvania was proportionably insignificant: and even if the colonies were not absolutely independent, until now I never heard that therefore they had no right to resist oppression; this is a doctrine that I consider heretical in politics and absolutely ridiculous in an argument like that in which we are engaged. I have been accustomed to believe, that, from the memorable meeting at Albany the independence of America had been determined upon; the grievances of America did not begin in 1775; resistance was not then for the first time meditated; nor would the people have remained colonists even if lord Chatham's advice had been taken: the enlightened part of the people of this country had made up their minds to assume a merited rank amongst nations; the object was at no time lost sight of; and the formation of a national congress in 1775, proves, that the independence of the whole people, and not merely the relief of particular colonies, was that object.

Instead of amusing us with such documents and assertions, which it has been almost a waste of time to notice, I wish the gentleman from Fayette had endeavored to explain, why, if Pennsylvania was independent, it did not establish a maritime

system of its own? why did it not commission vessels of war? why did it consent to accept commissions from congress for its own citizens? why, in passing the act of 1778, did it quote the resolutions of congress of 1775, as authority for doing so? why did it consent to appear and plead to the law and fact before the congress court of appeals? why did it not put the money in its treasury? These are questions which cannot be answered, and therefore they are evaded.

It would be improper for me, sir, to repeat what I have heretofore said on the general subject: it is sufficient for me to say, that the advocates of the resolutions before us have not controverted a single objection that has been made to them; they have not shown that the congress court of appeals exceeded its powers; they have not proven that the state was at any time a party; or, if it was a party, that the United States' courts had not cognizance of this maritime case; and therefore the assertion in the first resolution, that the United States' courts acted illegally and unconstitutionally is absolutely and wholly unfounded.

I hope to be indulged, however, whilst I make a few observations upon the manner in which the gentleman from Fayette has quoted from the Aurora: this I intend to do in order to expose shameful imposture, and not from any concern for that establishment, for I am not connected with it. There are very few, if any, sentences and paragraphs, the sense and meaning of which may not be mutilated by suppressing a part of either, or by adding words for the purpose: judge Wilson, during the debates in the convention, proved, by the relation of a story, too trite to be now repeated, that the bible itself might be so read as to convey palpable absurdities and contradictions; and it is therefore not surprising that a person, with such wonderful faculties as those possessed by the gentleman from Fayette, should have been able to read the hastily written paragraphs of a news paper in such a way as to give a meaning to them directly the reverse of the reality. I have read the passages he referred to; I hope other members will read them, and they will find as I did, that the gentleman read so much only as suited his purpose.

The first paper quoted was that of March 2d, 1803, to prove that the Aurora applauded resistance against the union: the gentleman read the first six or eight lines, and there stopped, because if he had gone further he would have read these lines, speaking of the law of April 1803. "But then, there is this infelicity in the case, that the laws of the union are also the laws of this commonwealth, and the decisions of the supreme court are and must be a paramount authority to any such (state) law. The law of this state is in reality *ex post facto* and void."

These few lines, sir, would have proven that the language now

held by the Aurora was precisely the language held in 1803, and therefore the gentleman suppressed them.

The extract from the paper of March 30, 1809, only proves that the writer had the honor and peace of the state sincerely at heart; that he deprecated military resistance, applauded the law introduced for paying Olmstead at once, and as the officers of government were vain and imbecile, he appealed to their weak passions the better to secure the public tranquillity.

But the principal charge is, that a consolidation of the states has been recommended: this, however, is not supported. It is very true that the Aurora did, as every independent press should, admit a speculative essay on the nature of our federal union; and it is as true, that it was mentioned that such iniquitous proceedings as those of Massachusetts and Pennsylvania would lead to a consolidation; but it is palpably false that a consolidation was recommended, or said to be preferable to the present federation. The essay of an anonymous writer, Lucian, did excite enquiry and has afforded scope to the dealers in foul invective; but the following passage from that essay, will prove the reverse of what the gentleman from Fayette has asserted; it will prove that the writer is as much the friend of state rights, as they are termed, as the gentleman himself; nay, it will prove that he urged in April last the very amendments, which the friends of the resolutions now before us, contemplate and call for:

"*Amendment proposed.*

"Every decision affecting the interest of a state, shall be entitled to an appeal from the supreme court to the house of representatives (U. S.) who shall constitute a court of appeals on questions arising under laws alleged to be unconstitutional—provided that the house, which shall try the question, shall not be the same which passed the law."

Is this, sir, like consolidation? does this show contempt for state rights? is this evidence of a change in principles or opinions?

I have gone into this explanation to show the pitiful means that are resorted to, in order to carry the resolutions before us: I ask gentlemen to take notice of these shameful proceedings; they are the substitute for facts and arguments, and prove conclusively that the cause thus supported is not a good one.

I apologise for the desultory nature of these remarks, but weak as the arguments of gentlemen were, and however unworthy of private notice their assertions may be, I have considered it a duty to take notice of them, because they were delivered in this place, and on this interesting occasion.

Mr. Bard. While I claim the right, Mr. Speaker, of forming my own opinion, I seem disposed to grant others the same

liberty; but at the same time, is not the opposition to these resolutions likely to get to a very unreasonable extent? We have been told, that the state of Pennsylvania has been for thirty years supporting an unrighteous cause; and that this unrighteous cause is likely to involve this country in a civil war. These things would indeed be very alarming if there was ever any foundation for them—if there was any truth in them. But, sir, if there is no truth in them, I don't see that we have a right to be alarmed about them. But as the gentleman from the city (Mr. Duane), says that Pennsylvania is not a sovereign state; as that gentleman defies any one in this house to prove that she ever acted as a sovereign state; that he would give up the controversy if he could believe any such thing; I will therefore endeavor to satisfy him on that head. The oath that the members of assembly had to take to support the old constitution, that was read by the gentleman from Fayette, proves that Pennsylvania in '76 considered itself a sovereign and independent state, subsequent to the recommendation of congress for establishing a court of admiralty. The recommendation bears date in November '75, some time before the declaration of independence. After the declaration of independence, and after the adoption of the old constitution of Pennsylvania, while the assembly was sitting in pursuance of that constitution, they prescribed by law the form of an oath of allegiance to be taken by all the inhabitants of the state. The oath to be taken in pursuance of that law, was in these words:

"I —— do swear (or affirm) that I renounce and refuse all allegiance to George the 3d. king of Great Britain, his heirs and successors; and that I will be faithful and bear true allegiance to the commonwealth of Pennsylvania, as a free and independent state; and that I will not at any time do, nor cause to be done, any matter or thing that will be prejudicial or injurious to the freedom and independence thereof, as declared by congress; and also that I will discover and make known, to some one justice of peace of the said state, all treasons or traitorous conspiracies, which I now know, or hereafter shall know, to be formed against this or any of the United States of America."

I confess, Mr. Speaker, I am led to believe that there has been some new discovery made in this house by some of the gentlemen. It is the first time I believe we ever heard that Pennsylvania was not a sovereign and independent state. Never, until the gentleman from Philadelphia came and informed the house of this new discovery. But so far is that gentleman from being right, we find that Pennsylvania was not only a sovereign state but every man in the state had to subscribe an oath to that purpose. And, sir, any man would have been termed a tory and been

honored with a continental coat of tar and feathers, if he had not subscribed that oath of allegiance. But it seems we are now informed, for the first time, that all sovereignty was in congress, and that Pennsylvania was not a free and sovereign state. I hope the gentleman from Philadelphia is now convinced that he is wrong. However I shall read that gentleman another document. The date of the law which I just read was dated the 13th of June, 1777. The next document I shall read in this case is another form of an oath, which was taken by all persons in the state who had not complied strictly with the conditions of the before mentioned law. It is in these words:

"I, A. B. do solemnly and sincerely declare and swear (or affirm) that the state of Pennsylvania is, and of right ought to be, a free, sovereign and independent state. And I do forever renounce and refuse all allegiance, subjection and obedience to the king and crown of Great Britain. And I do further swear (or solemnly, sincerely and truly declare and affirm) that I never have, since the declaration of independence, directly or indirectly aided, assisted, abetted, or in any wise countenanced the king of Great Britain, his generals, fleets or armies, or their adherents, in their claims upon these United States. And that I have, ever since the declaration of the independence thereof, demeaned myself as a faithful citizen and subject of this or some one of the United States; and that I will at all times support the freedom, and sovereignty, and independence thereof."

Mr. Speaker, we have been informed that every member of this house *are* bound upon their solemn oaths to support the constitution of the United States. Perhaps a number of members have also taken the oath I have just now read. I, for one, took this oath to support the sovereignty and independence of the state of Pennsylvania. I, in that early period of life, swore with an uplifted hand, and appealed to the searcher of all hearts, that she ought to be a sovereign and independent state. Perhaps the gentleman from Philadelphia, and this gentleman lawyer from the county of Bedford, never did take this oath. But, I dare say, that there are several members of this house that have taken it. Will these gentlemen now come forward and have their names registered in the face of their oaths? Will they come forward and say that Pennsylvania never was an independent and sovereign state? I think the gentleman from the city, and the learned lawyer from the county of Bedford, perhaps didn't take this oath; but if there is any gentleman on this floor who has subscribed this oath, it would be an insult to his understanding to ask him to say that Pennsylvania was not an independent and sovereign state. If he was to say so now, it would be a breach of his oath. It would be a *subordination* of perjury.

It has been stated by the gentleman from Fayette, that when this country come to be involved with the crown of Great Britain, the neighboring states thought it an act of prudence to consult with each other on the best means of conducting their independence. Men of understanding and of sound discretion were appointed by each state for this purpose, and they met together. You may call them a council, you may call them arbitrators, or you may call them by the name of congress, which you please. They were to collect information from every part of the United States. They were to act as a council of safety, and to use their discretion in every exigency, and to give advice to the respective states, and to endeavor to get a redress from our grievances. They petitioned and remonstrated to the crown of Great Britain; but all their remonstrances and importunities were in vain. They proved nothing but two things—one was, would they become abject slaves to the crown of Great Britain, or would they declare independence and assert their freedom? This congress was authorized to declare independence, and they did declare it. If the state of Pennsylvania was then an independent state, I presume no man will say that she lost it by the declaration of independence; and I contend that she never gave up her independence. The gentleman from the city, and the gentleman from Bedford, say that congress possessed all power for national objects by implication—that there was no written agreement; but an understanding among all the states that congress should have all this power. But if the gentlemen's doctrine of implication is to hold good, it amounts to every thing, because it embraces every thing. Power by implication cannot be limited. If it has no bounds nor no limits, then it is without limits. By implication you can make it any thing. It seems these gentlemen have no such thing as this vile parchment to support them; but this clean scheme of implication is the very scheme that seems to suit the gentlemen; for no other scheme seems to suit their purpose but that congress had all the powers of war and peace by implication.

I say, sir, if the state of Pennsylvania was a sovereign and independent state in 1777, which she is declared to be, will any one say that they disposed of their sovereignty before April 1779, because previous to April 1779, the decision of this case had taken place in the court of admiralty? I say, Mr. Speaker, that if on April 21st, 1779, Pennsylvania was a sovereign and independent state, the question is at rest; and the state has not been prosecuting an unrighteous claim, but the United States have been prosecuting an unrighteous claim. If the state of Pennsylvania was a sovereign and independent state, then the decision of their court of admiralty could not be disputed. If

the state of Pennsylvania had invested certain powers in the executive council, and this executive council by virtue of those powers, ordered the money to be paid into the treasury, it could not be called in question. The congress court of appeals had no power over it. We are not talking now of facts, but we are talking of principle; and the principle embraced in this question, is of infinite importance to the rights of the people; and we have clearly shown that according to this principle, Pennsylvania being a sovereign and independent state, had not given up the rights she reserved. But how do gentlemen attempt to obviate this principle? Why, they attempt to obviate it by saying that congress possessed all power over the courts of admiralty by implication. That it was implied. But I say that Pennsylvania never gave up her sovereignty; and if she was a sovereign and independent state at the time the court of admiralty decided the case, their argument must fall to the ground; and as the gentleman from Bedford has said, it is mere shuffling—mere pusillanimity. But will any one say that a mere recommendation from congress to the states to establish courts of admiralty, would bind them to do so? The adoption was a mere surplussage which they might have agreed to or not. The recommendation never gave any force to it. It was the adoption, it was the ratification by the state; and the ratification was the adoption of the thing recommended, but any state might agree or not. Pennsylvania adopted it by declaring there should be no appeal from a jury trial, and she had a right to do so, and congress had no power over it; for Pennsylvania had never ceded that power.

The gentleman from the county of Philadelphia, as well as the gentleman from the city, have brought forward a great number of abstract principles that have no bearing upon the question; but it is useless for me to show their absurdity. We know very often men of great ingenuity are endeavoring to throw dust in the eyes of the people that they may not be able to see plain. Whether or no, there has been a great deal of this dust thrown in the eyes of members to endeavor to divert their understanding, but I think it will not succeed. The gentleman from Philadelphia, in all his argument, has avoided argument. But he tells us, and the gentleman from Bedford tells us, that Pennsylvania is raising her head against the general government. That we are to be involved in a civil war, and that all the states are to be upon us in an instant. He says that the object of these resolutions is to insult the federal government, and that we have no right to complain, and that we ought to be silent, and that we ought not to murmur.

But, Mr. Speaker, believing that the state of Pennsylvania had the power of establishing her own courts of admiralty, and that

she had a right to decide the case of Olmstead—and as she never delegated that power 'till the money was in the state treasury, I am clear that the state of Pennsylvania has been wronged, and I am not afraid to say so. But, as the gentleman from Bedford tells us, we have no chance of recalling the money we ought to be silent. We ought not to say a word on the subject.

If a man comes into my house and villainously and wrongfully wrests the money out of my hand, shall I be afraid to say that he has wronged me? Well, if the United States' courts come and take the money out of my hands, shall I be afraid to say that they have done it wrongfully? But why the gentlemen's fears are alarmed on this question, I endeavored on a former occasion to show some causes, which I need not refer to now; but I find a number of gentlemen on this floor who think the federal courts can do no wrong—that they can't be touched nor spoken of—that the judiciary is paramount to all law—that they are paramount to the assembly, to congress, to the president, and all. The result of this argument is, that if any judicial officer of the federal court, comes into Pennsylvania and wrests the whole money from the treasury, according to the gentleman from Bedford, we ought to be silent—we ought not to murmur. According to the gentleman from the county of Philadelphia, we ought to go and have them broke by impeachment. A pretty thing this would be, to let the money of the state go, and then go and punish the judge by having him broke! A pretty way this would be of getting back our money. In my view this would be detestable, horrible doctrine, and if this doctrine contended for is correct, the framers of the constitution must have been ignorant men—that they framed the constitution futile and weak, and were so grossly inattentive to their duties that they never thought that laws to be binding should be signed by all the district judges of the United States, by all the judges of Pennsylvania, by all the district judges and by every constable. As a learned judge of this state has said, dog won't eat dog. As a certain set of gentlemen want what they call an independent judiciary, they are willing to submit to the illegal and unconstitutional conduct of the federal judiciary. This judiciary is to have all the power. It is to open its extensive jaws and swallow up all the state governments.

We know one class in the United States that are very strenuous for what is called an energetic government; and another class, in which I confess to be one, are not for this energetic government, as they call it. Those who are for this energetic government wish all the state governments to be swallowed up by the federal government. This is what they want; and then

perhaps we should have an emperor or a king—a Bonaparte or a Burr to govern us.

This house has heard a great deal about executive influence; but in my opinion these are words without any meaning. I can't see how they apply to these resolutions. I can't see how the executive can have any undue influence on any of the members of this house. We are told that these resolutions were palmed upon this house by executive influence; but so far from this being the case, I can assert that the governor never thought of such a thing as these resolutions.

The gentleman from Philadelphia, while he admits that the congress of '76 had no written constitution upon parchment, he alleges that they had all the power by agreement of the states—that it was implied. But if the gentleman can show us either by written or parole testimony that the state of Pennsylvania ever submitted her sovereignty to congress, I will agree that he is right. But unless he can do this, all he has stated availeth nothing. It availeth nothing for him to say that by this implication of power, congress had a right to reverse all the decisions of the state of Pennsylvania, and bring them up before their high mightinesses the federal judges, to be revised. According to this principle they might claim the right of reversing all the proceedings of our legislature. It would be really extraordinary that a court should have it in their power to reverse all the proceedings of the legislature. But I say they have no such power. The adoption of the confederation in the year 1781, gave no power to revise a decision of the court of admiralty. Congress had no power to revise it, and the federal judges had less power. But even taking it for granted, for argument sake, that the court of appeals had this power, the federal court had not, and therefore their proceedings was illegal and unconstitutional.

Judge Washington contends, that the federal court has a paramount power in all cases. He declares that the executors of David Rittenhouse was only a stakeholder; but is this a proper construction? I ask any gentleman if a judge by his legal quibbles and sophistry is able to evade a constitution, of what use is a constitution? If a judge can evade a clause in the constitution, of what avail is that constitution? Here it is evident that the money was intended for the use of the state, and it was paid into the hands of the state treasurer, who held it for the state. If they can get over this, they can take all the money out of the treasury, upon the same principle. The state has a right to vest its own money as they please. They may put it in the name of Wm. Findley as state teasurer, or they may put just Mr. Findley. They may put it into the hands of any individual, or in the name of any individual, it still belongs to the state, and no so-

phistry of the federal courts can make that individual a stakeholder; because he holds it for the use of the state only.

Mr. Speaker, I have paid considerable attention to this subject, and weighed it in all its bearings, and I have no hesitation in saying that the conduct of the United States' court was illegal and unconstitutional. Therefore I have no objection against voting for the first resolution. With respect to other parts of these resolutions, I am not prepared to say that I will sanction them all, although I don't know but I may support them; but that the judges of the federal court acted illegal and unconstitutional I have no question.

Mr. Thompson. The gentleman from Franklin (Mr. Bard), has been endeavoring to justify the independence of the state, and, sir, he has made a very independent speech! So much so, that I don't know whether he is in favor of a general postponement or not. But he informs us, among a number of other discoveries that he has made, that the confederation was agreed to in 1781, and that independence was declared in 1776. The gentleman wishes to make us believe that we were not governed by the articles of confederation, until they were finally adopted. But give me leave to say, that although the confederation was not finally adopted until the year 1781, it was in full operation and supported by Pennsylvania almost as soon as it was proposed.—The patriots of '76, when they declared independence, knew that they must vest powers of peace and war, which embraced all maritime cases, in one general government. That congress should have this power. The people sent their deputies to congress with this view only. Congress recommended the establishment of admiralty courts in the different states, and it was the sense of all the states that they would comply with this recommendation. [Here Mr. Thompson read a document of the legislature of Pennsylvania, stating that they had established their court of admiralty "agreeably to the directions of the honorable American congress," and he proceeded to show by this document (of which we have been unable to procure a copy) that the state of Pennsylvania did not consider herself as sovereign and independent, as to national concerns. That they looked up to congress as the sovereign power, the arbiter of war and peace, and that therefore they wisely confided to congress all authority necessary for these purposes, and particularly that of a supreme admiralty jurisdiction.]

The question was now taken on Mr. M'Kinney's motion to postpone the resolutions generally, and the yeas and nays were as follow:

Yeas.—Messrs. Alden, Bethel, Cochran, Cunningham, Dorrance, Duane, Ebenborn, F. Engle, Frailey, Friedt, Funk, Get-

tys, Gisch, Grafius, Graham, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Kinney, M'Sherry, Pennock, Pollock, Ross, Ruth, T. Smith, Spayd, Steele, Summers, Thompson, Todd, and Whiteside.—33.

Nays.—Messrs. Alter, Bard, Brooke, G. Brown, Brown (Greene), Brown (Mifflin), Clemens, Colmery, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Griffin, Hanna, Johnson, Jordan, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsey, Rankin, Rupert, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Weiss, Welles, Weygandt, Wilson, and Weber, speaker.—58.

Mr. Duane. When the resolutions before you, Mr. Speaker, were under discussion in committee of the whole, I confined my attention to the first of them only, because other gentlemen had entered into an investigation of the whole subject, and because I believed it would be best to defer my remarks upon the governor's conduct until the resolution approving that conduct should come before us in the house.

The subject at large is now before us in an imposing shape: the resolutions, before us, fraught with disgrace and mischief, have had the sanction of a majority in the committee of the whole, and it now behoves every man to speak boldly, who is anxious to escape the odium of having partaken in these foul transactions.

Sir, the gentlemen who composed the grand committee, and indeed all the members of this house, will recollect my uniform declaration, prior to the introduction of these resolutions, that I wished Olmstead's case were buried in oblivion. In consonance with this wish, every word was uttered and every vote was given in grand committee. Nor was this sentiment of short existence; long before I was nominated for this station I expressed it; and, when nominated and asked by several officers under executive appointment, whether it was my intention to aid in preferring articles of impeachment, I gave the same reply, that I would do all in my power to prevent a revival of the controversy—although many of my friends thought that such articles ought to be preferred. I confess, besides, that I was actuated in this case, by an opinion that the governor was an honest man, acting from "a mistaken sense of duty."

But, sir, the events that have taken place here, have convinced me that forbearance in this case almost amounts to aiding in the disgraceful proceedings in which we are engaged: every thing that I see and hear induces me to think the governor not quite so

honest and deceived as I had imagined—and I am led to believe that the object which gentlemen have in view is, not to assert the supposed rights of the state, but to support a faction.

In such circumstances as these, sir, I am not satisfied with merely expressing these sentiments and giving a vote against these pernicious resolutions; I wave all delicacy towards those who have none, and I care not for the feelings of those who have no feelings for their country; in fine, sir, I wish to leave, my sentiments at least, upon record, to place upon the journal some document calculated to correct imposture, to show that the members of this house were not all regardless of the principles of our government, and to let the people know into what incompetent hands they have placed the honors and duties of this great state.

I intend to offer a substitute for the resolutions now before us, and I cannot induce myself to apologise for the time that I shall consume in reading it, because the censure, if any, must fall on those who rendered it necessary, if we expend our time in debate.

Mr. Brown (of Greene). I call the gentleman to order.

Mr. Duane. If, Mr. Speaker, I have transgressed the rules, I have some excuse in the circumstance of my being a young member, but I do not believe I have transgressed. I have a right to exercise all the privileges of a representative of the people, and no one shall deter me from exercising them; when out of order, you, sir, will no doubt correct me.

I repeat, if the time of this house has been wasted in debates, if the public business has been neglected, I wish the people to learn that the blame attaches to those who think the re-election of a governor a matter of much more importance, than the establishment of schools, the promotion of the arts and sciences, or the formation of roads and canals: let the people know, that the integrity of the union, the constitution of our country, and our republican institutions are all sacrificed to secure the ruling powers in their unmerited stations: let the people know that the plan of operations is settled out of doors and every means taken to check enquiry within.

When, sir, it shall appear from the substitute that I shall read, that I think the governor ought to be impeached, let it be recollected that this change of sentiment has necessarily followed the lamentable experience I have had in this legislature. In offering this paper, I merely obey what I conceive to be the wishes of my constituents, and the impulse of my own conscience. I have no resentment as to the past to gratify, nor any hope as to the future, except that of meriting the good opinion of my fellow citizens.

I now move, Mr. Speaker, to postpone the resolutions and preamble under consideration for the purpose of introducing the following as a substitute.

Mr. Duane was seconded by Mr. Summers, and the substitute was read, as follows:

The governor having thought proper to detail, in his message to the legislature, at the commencement of the present session, the circumstances under which the long depending controversy, commonly termed "Olmstead's case," had been brought to an issue; and, having called the attention of the legislature to a consideration of the consequences, which, he presumes, will follow, in case an amendment shall not be introduced into the constitution of the United States, establishing an impartial tribunal for the decision of all cases of a controversial or doubtful nature, that may arise between the union, as a federal government, and the states in their individual capacity; it becomes the duty of the house of representatives to express their sentiments, as well from a consideration of the importance of the subject, as from their respect for the constitutional dignity of the office of chief magistrate of Pennsylvania.

Although the house of representatives might, with propriety, confine themselves to a prospective consideration of the subject, which alone seems to have been called for by the governor's message, they do not choose to shun a general consideration of it, lest their silence should be attributed either to an indifference or doubtfulness respecting the occurrences that have called forth the recommendation of the executive, or to a tame subserviency to the known wishes of that officer.

As the responsible representatives of a free and virtuous people, therefore, they engage in the task they have assigned themselves, with an unfeigned zeal for the public welfare, with a consciousness of the importance of the subject, and with a sacred regard for the oaths they have taken in the presence of their God.

So many reports and representations, upon the controversy in the case of Olmstead, are to be found upon the journals of the legislature of this commonwealth, that another detail would now be unnecessary, were there not in the greater part, if not in all, of the former, so much sophistry and so many appearances of a desire to conceal the whole truth, as to demand a careful exposition of the proceedings at large. On this account, therefore, as well as to record the sentiments upon which the present house of representatives found the subjoined resolutions, a review of past occurrences will be taken, in as concise a manner as is consistent with their importance.

The house of representatives believe that the exposition, which they are about to offer, would derive considerable force from a developement, in the first instance, of the occurrences during the last spring, and from a refutation of the pretexts upon which the laws and institutions of the union were violated and abused; but they will not be precise, because they rely more upon a calm and careful perusal of what they write, than upon a studied arrangement of the subject, or an embellishment of style, for bringing conviction to the public mind. A simple, chronological order will therefore be adhered to, under the following heads:

1. Whether congress had authority to institute admiralty courts, and to determine upon appeals from their decision?
2. What were the measures of Pennsylvania consequent to the recommendation of congress for the establishment of admiralty courts?
3. The case of Olmstead.
4. The circumstances, consequent to judge Ross's refusal to execute the decree of the courts of appeals.
5. The consequent proceedings of Olmstead before our state courts, and the decision of the supreme court of Pennsylvania.
6. The institution, progress and issue of a suit brought by Olmstead, in the district court of the United States.
7. The consequent conduct of the governor of Pennsylvania.
8. The pretexts urged to justify that conduct.

FIRST POINT.

Whether congress had authority to institute admiralty courts, and to determine upon appeals from their decisions?

The house of representatives of Pennsylvania are persuaded, that the tyranny and exactions, which the American colonies so long and so patiently endured, prior to 1774, are too well remembered by the old, and that their history has made too deep an impression upon upon the minds of the young, to render it necessary for them to detail the long catalogue of hardships and privations, which ultimately aroused a glorious spirit of resistance, and kindled the hallowed flame of virtuous liberty, in the hearts of a hardy yeomanry. Although, at that early day, the expression of public sentiment was not as explicit as it was in two years thereafter, it is a truth dear to the public recollection, that this was not the effect of an indifference about the issue, and that, although the colonists generally did not know the sentiments of each other, the sages and patriots of those days had uniformly but one object—national independence.

Nor will the house attempt to depict the awful condition of the colonies, at that time; it is sufficient to say, that they had none of the fiscal resources necessary for war: they had not an armed

force, adequate to the execution of any common military enterprize, much less capable of resisting an organised army of mercenaries; nor had they arms or ammunition of any kind, in any degree equal to the exigency; yet they resolved to be free, and the event gloriously proved that an united people cannot be conquered.

Thus the patriots of the revolution, nay the people at large, had but one object, the emancipation of their country from the yoke of a despot: and, for the attainment of their wishes, they found that a supreme authority would be necessary, an authority upon which all might alike rely for repelling external enemies, or for adjusting internal differences according to the established laws. It was found that the British ministry were making every exertion to detach particular colonies from the common cause, and to excite a civil war, with the intention of profiting by the consequent weakness of each to crush them all. At that crisis, partialities and jealousies were nobly sacrificed on the altar of national freedom, and the people of the colonies resolved to establish an organised body with executive, legislative and in some instances judicial powers, suited to the dangers of the times, and capable of averting them.

The colonial assemblies, or special conventions, therefore, the immediate organs of the people, each sent to a general congress their representatives, whose services laid the foundation of their country's greatness and happiness; they granted them, from the very nature and necessity of the case, a jurisdiction extending over the whole of the colonies, and commensurate with the objects intended to be accomplished.

What were those objects? a successful resistance of the enemy and the consequent freedom of the nation. For the accomplishment of those objects, a formal compact was not necessary; the representatives of the people, by their instruction or assent, appointed national delegates; those delegates did not depend upon any foreign power for their existence as a body; they absolutely formed the government of a sovereign nation by the strongest of all rights—the will and approbation of the people.

What, then, were the necessary attributes of the sovereignty, thus given to congress? To make war, conclude peace, form alliances, establish armies, and issue money—and they had a right to exercise all the authority incidental to those powers, and among the rest they had a right to ordain what should be prize, and to establish courts for the trial of prize causes.

That congress had those sovereign powers and exercised them with the consent of the people, will be seen from a recapitulation of some of the instances, in which they were exercised:

1775, May 2. Orders were given to train the militia for defence.

June 1. An offensive war was disclaimed, and the invasion of Canada by any colony forbidden.

June 14. Orders were issued for raising a regular army, and on the next day a general to command it was appointed.

July 6. War was, in effect, declared.

Nov. 7. Articles of war, extending to punishment by death, were framed.

25. Resolutions for establishment of courts of admiralty and courts of appeals were passed.

28. Rules for the government of the navy were adopted.

Dec. 5. Provision was made for salvage in cases of recaptured vessels.

13. A naval force was established.

20. It was declared that the *laws of nations* should regulate the proceedings in prize causes.

26. The faith of the *united colonies* was pledged for redemption of the paper money.

1776, March 23. Equipment of privateers was authorised.

April 3. Form of commission to privateers settled.

Such, among others, were the acts of sovereignty exercised by congress, prior to the declaration of independence; they were all performed under the authority of, and were voluntarily confirmed by the people of the *united colonies*. Let it not be said, then, that any higher sanction was necessary—the people of that day branded those as traitors to their to their country, who dared to question the legality and propriety of the powers exercised; and melancholy indeed would have been the issue, had the people of the individual states depended upon their distinct exertions; had each state a will of its own, or a right to refuse its assent to the measures and acts of the national congress. If such a state of things had existed, the pages of our history, instead of recording the virtues and valor of the people of America, would be defiled by lamentable details of anarchy and confusion among the colonies.

But the glorious declaration of independence consummated, even in a more formal manner, what had been throughout the wishes of the people; that instrument was the avowal of a solemn, national compact, as its luminous language thus emphatically declares:

"We, therefore, the representatives of the United States of America, in congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the

name and by the authority of the good people of these colonies, solemnly declare that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

This solemn declaration, made in the name and by the authority of the people, and not by the authority of the states, either as collective or as individual sovereignties, formed an indissoluble chain of connection throughout the country, and gave congress the supreme power of all national and external objects, inasmuch as this act, done in the name of the people, received their enthusiastic approbation, and was supported at the price of their blood. It would be unnecessary, then, to detail the various other instances, in which congress exercised the sovereign and national authority, until the 1st March, 1781, when the articles of confederation were ratified; it is sufficient, in order to elucidate the present investigation, to show the manner in which prize courts were established.

And here it may be useful to premise, in answer to a cavil that has been made upon this point, that although congress did not divulge their wishes in the form of laws, as is now usual, they had the power and right to do so; but acting whilst the country was in a state of revolution, and confiding in the patriotism of the colonies or people, the simple form of recommendatory resolutions was preferred, and that those resolutions had all the effect of laws, the journals of congress and the history of the times are the most authentic evidences.

Let us then turn our attention to the resolutions of congress of the 25th November, 1775, they are preceded by a preamble, stating, that, in consequence of the seizure, by British ships, of certain American vessels, and of their condemnation, even without a trial, it was necessary that the people of the colonies should retaliate, and that "some laws be made to regulate, and tribunals erected competent to determine, the propriety of captures:" Therefore resolved,

"4th. That it be and it is hereby recommended to the several legislatures of the united colonies, as soon as possible, to erect courts of justice or give jurisdiction to the courts now in being, for the purpose of determining concerning the captures to be

made as aforesaid, and to provide that all trials in such case be had by a jury, under such qualifications as to the respective legislatures shall seem expedient."

That this resolution had all the force of a law must be evident: 1st, because the individual states had no right to erect admiralty courts unless authorised by congress, for so to erect and execute under admiralty law, has ever been an attribute of the sovereign power of peace or war, which no particular state possessed, but which the people had confided in a national congress alone; 2d, because armed ships and privateers, even those owned by any particular colony, held their commissions from congress, and not under any individual colony, and otherwise might have been treated as pirates; 3d, from a consideration of the fact, that to make valid certain prizes made under the authority of North Carolina, prior to 1775, it was necessary to obtain the special resolution of congress, which was passed April 4, 1777, and "transmitted to each of the United States, *as a law* in any prize cause, which may be depending or instituted in any of the courts therein, and to secure the condemnation of vessels under such commissions."

Having thus authorised, as a matter of accommodation, the establishment of prize courts by the colonies, and not merely recommended the exercise of a power which it is erroneously pretended the colonies already possessed, we find that congress proceeded further, and declared that, whether a colony court should or should not decide by jury trial, there should be an appellate jurisdiction in congress. Their resolution accompanying the one quoted above, is in these words:

"6th. *In all cases* an appeal should be allowed to the congress, or to such person or persons as they shall appoint for the trial of appeals, provided the appeal be made within five days after the definitive sentence, &c."

Thus the colony courts were empowered to exercise admiralty jurisdiction, congress being content to retain, in those times of distress and confusion, merely its sovereign right to reverse or confirm the decisions of those inferior courts. And from this review of facts, these conclusions irresistibly follow:

1. That the powers of congress were delegated to them by the people under awful and extraordinary circumstances, and were necessarily intended to be, and were deemed, adequate to the national objects.

2. That congress were the supreme, governing council of the nation, which sustained the country by combining and directing its resources and energies, and which baffled its enemies by the wisdom of its councils and activity of its measures.

3. That among the attributes of sovereignty, congress alone

had a right to establish prize courts, and to reverse their decisions upon appeal in every case whatever.

4. That the people of America applauded the congressional exercise of sovereign power, and particularly by the declaration of independence, gave as full force to the authority of congress, as if the most rigid forms of law had been observed.

SECOND POINT.

What were the measures of Pennsylvania, consequent to the recommendation of congress, for the establishment of admiralty courts?

According to the 4th resolution of congress, the legislature framed an act on the 9th of September, 1778, erecting a court with admiralty powers. The enacting clause is in these words:

"Whereas it is necessary that due provision should be made for the trial and determination of crimes, controversies and suits, properly within the cognizance of the maritime law, and not enquirable at common law."

The 5th section, relating to the appointment and duties of jurors, among other things, says:

"The finding of the said jury shall establish the facts, without re-examination or appeal."

And the 6th section says:

"In all cases of capture, an appeal from the decree of the judge of the admiralty court of this state, shall be allowed to the continental congress, or to such person or persons as they may from time to time appoint for hearing and trying appeals."

It is evident even from the phraseology of this law, which, particularly in the last quotation, is in the very words of the resolutions of congress, that the legislature of Pennsylvania considered those resolutions as the foundation of, and authority for, their act: the objects contemplated by the exception made in the 5th section are not so obvious.

The law must have been thus passed, either with a resolution to resist the appellate jurisdiction of congress, or from an unacquaintance with the principles of maritime jurisprudence. That jury trial, if no appeal were allowed, would be absurd and dangerous in maritime cases, must be apparent from the consideration that the nation is answerable to foreign powers for maritime decisions upon law as well as fact, and that if no revision were granted, a jury might involve the country in incalculable difficulties. No doubt congress were aware of the danger, and for this reason used the word appeal, a term of the civil law implying an examination of both law and fact; for had they merely intended to review the law, they would have employed the term writ of error, implying an enquiry as to law only. And, let it be observed, that the legislsture of Pennsylvania, in discarding the

common law, in the enacting clause of their act of 1778, and in adopting the term appeal, have left room to doubt at least as to their own intentions.

But, it has been said, that the intention of Pennsylvania cannot be questioned, and that the state refused to admit the revision of a jury's verdict in any case. The legislature therefore having determined that all cases should be tried by a jury, their act amounted to a total rejection of the authority of congress, and to an absolute denial of the right of appeal in all cases, claimed in their 6th resolution.

Hence arises the question, whether a colony had a right to resist the exercise of the supreme authority? That it had not will be admitted by every man, who regards with reverence the cause which congress had to sustain, and the authority of the people of America under which it exercised its powers, and who reflects upon the mischiefs that would have befallen the country, if a colony might at pleasure, and without seceding from the union, have refused to adhere to the will of the constituted and supreme head. If opposition might have been justly made in one case, it might have been in every other, and the calls of congress upon the colonies for men or money, might have been as justly disregarded as the claim of appellate jurisdiction in prize causes—yet a refusal to comply with the former, would have been regarded as an opprobrious desertion of the common cause, and why may not the denial of the latter deserve a severe reprobation?

It must be granted, therefore, that that part of the act of Pennsylvania, of September, 1778, which was made in direct opposition to the resolution of a superior power, could have no legal force, and that a pertinacious adherence to it, evinced more regard for local consideration and the mere forms of law, than for the great obligations of the social compact, the solemn resolutions of the congress of 1776, or the great and immediate interests of the union. And, unless it can be believed that the law of a single colony, had a greater force than the act of the collected representatives of the whole American people, or that each colony had a right to annul the resolutions of congress, the right of that body to disregard the colonial provision relative to appeals from verdicts of juries, must remain undisputed.

THIRD POINT.

The case of the sloop Active now presents itself to our view, to illustrate the pernicious tendency of the refusal of Pennsylvania to allow the appellate jurisdiction, claimed, and of right preserved, by congress.

Gideon Olmstead and three other American mariners had been taken prisoners by the British, and, after having been con-

fined in irons on board a British frigate, were sent to Jamaica, where they experienced new hardships. They were at length put on board a sloop of war, called the Active, and bound for New-York, then in possession of the enemy. Aware of their destination, anxious to make amends for their losses and misfortunes, and determined to risk their lives in order to escape the fate that awaited them, Olmstead and his companions concerted measures for rising upon the captain and men belonging to the Active, and for taking that vessel and carrying it into an American port. When within one day's sail of the American coast, they bravely put the first part of their plan into execution, confined the captain, mate, and passengers in the cabin, kept the deck, made sail, and were within sight of land; when the Convention, a vessel of war belonging to the state of Pennsylvania, and the Girard, a private armed ship, hove in sight. Disregarding the claim and merits of Olmstead, the captain of the Convention took him on board that vessel, and sent the Active into the port of Philadelphia, where it arrived in the afternoon of the day on which the Convention appeared in sight, the 9th of September, 1778.

On the 14th of that month a libel was filed in the admiralty court, on behalf of Thomas Houston, commander of the Convention, and of the state of Pennsylvania, to which that vessel belonged, claiming the Active, &c. as a prize made upon the high seas.

On the 12th of October a claim was filed on behalf of James Josiah, commander of the Girard, as consort of the Convention, and as in sight at the time of the alledged capture.

As soon as Olmstead was released from the Convention, he took measures for asserting his claim, and it was accordingly filed on the 19th October, in the name of himself and his three companions, as captors of the Active, &c.

On the 4th of November, the cause was tried by a jury, before George Ross, esq. the judge of the admiralty court; depositions, as is usual in such courts, were read on behalf of the libellants and claimants; arguments of counsel were heard, and the jury returned the following as their verdict:

"And now the said jurors, having heard all the exhibits above set forth, and the arguments of the respective advocates thereon, and taken time to consider thereof, upon their oaths and affirmations aforesaid, respectively do say, that they find as follows, viz. One-fourth part of the nett proceeds of the sloop Active and her cargo to the first claimants (Olmstead, &c.), and three-fourth parts of the nett proceeds of the said sloop and her cargo, to the libellant and second claimants (captain Houston and captain Josiah) as per agreement between them."

On the 5th November judge Ross condemned the Active as lawful prize, and ordered the distribution of the proceeds of sale as above awarded. On the same day Olmstead entered an appeal from the *verdict* and *decree*, and judge Ross accepted his sureties for prosecuting the same.

According to the 6th resolution passed by congress, on the 25th November, 1775, a court of appeal was held on the 12th of December, 1778, and before this court counsel for all the parties (including the claimant for the state of Pennsylvania) were heard, and all the evidence that had been heard by the judge was read. On the 15th of the same month, the court of appeals appointed by congress, after "having heard and fully considered as well all and singular the matters and things set forth and contained in the record or minutes of proceedings of the court (of admiralty of Pennsylvania), in the above cause, as the arguments of the respective parties," reversed and annulled the sentence or judgment of the admiralty court, and adjudged the Active, &c. as lawful prize for the use of Olmstead and his companions. The court also directed that process should issue out of the state admiralty court to carry this decree into execution.

Here it cannot but be useful specifically to remark:

1st. That the decision of the jury was not, as it ought to have been in an admiralty cause, that the prize was lawful or not, or that either of the claimants was the true and only captor; it simply awarded a distribution of the prize among all who claimed.

2d. That all the evidence given before the admiralty court was laid before the court of appeals.

3d. That, as all the parties (the state appearing by its counsel as well as the rest) were heard upon the appeal, they aknowleged the right of the congressional court, to hear and determine upon that appeal, as allowed by judge Ross, "from the verdict and decree or sentence in this cause."

4th. That the court of appeals was held on the 12th December, 1778, in the very place (Philadelphia) where the admiralty court had tried and determined on the 15th of November preceding; where all the parties were present, and where all the jurors lived.

5th. That the court of appeals was composed of men quite as honest as the jurors, less likely to be interested, better informed upon the principles of law, and more capable of applying them to the facts, proved in evidence.

The judge of the court of admiralty, however, refused to carry the decree of the court of appeals into execution, and thereupon congress took up the consideration of the subject, and passed the following, among other resolutions, on the 6th of March, 1779:

"Resolved, That the committee, before whom was determined the appeal from the court of admiralty for the state of Pennsylvania, in the case of the sloop Active, was duly constituted and authorised to determine the same.

"Resolved, That the said committee had competent jurisdiction to make thereon a final decree, and therefore their decree ought to be carried into execution."

Ten states voted for the first resolution, but two against it, Pennsylvania and New Jersey.

On the last resolution, embracing the material principle, every state in the union, except Pennsylvania, voted unanimously in the affirmative, as follows:

In favor of the resolution:

New Hampshire—Mr. Frost.
Massachusetts—Samuel Adams, Lovel, Thornton.
Rhole Island—Collins.
Connecticut—Dyer, Root.
New York—Jay, Floyd.
New Jersey—Witherspoon.
Maryland—Plater, Paca, Carmichael, Hervey.
Virginia—T. Adams, M. Smith, R. H. Lee.
North Carolina—Penn, Hill, Burke.
South Carolina—Laurens, Drayton.
Georgia—Longworthy.

Against the resolution:

Pennsylvania—Atlee, Shippen, Searle, M'Lean.

A committee of conference was appointed by congress to discuss and terminate the point at issue, but Pennsylvania refused to abandon the ground it had taken, and congress, unwilling in the midst of a dreadful war to maintain such a controversy, contented itself with a strong assertion of its rights before the whole American people.

Thus did Pennsylvania, which had become materially interested in, and a party to the suit, whose citizens had tried, whose judge had condemned, and whose treasury was to be enriched by the money belonging of right to Olmstead, pertinaciously, and in a tone of defiance disreputable at such a crisis, refuse to abide by the decision of that body of sages and patriots, whose virtue and disinterested devotion to their country so largely contributed to its salvation, and to secure the blessings it had ever since enjoyed.

If the general merits of the case did not thus sufficiently establish the impropriety of this conduct on the part of Pennsylvania the general circumstances under which the jury decided in th, first instance, might well be scrutinised; but there exists no necessity for doing so, as every candid man may readily decide between the verdict of twelve men, who tried a cause in which

they were themselves indirectly interested, and the resolutions adopted by all the disinterested states of the union.

Nor can this free expression of opinion, at this day, be regarded as intended to sustain any other cause than that of truth: to abstain from this candid expression would be disreputable to our character, as representatives of a people, who, we believe, consider it more honorable to acknowlege, than to persist in, error.

FOURTH POINT.

The circumstances consequent to judge Ross's refusal to execute the decree of the court of appeals.

Here let us review the positions already established—1st, congress had a right to erect admiralty courts, and to grant a court of appeal jurisdiction in all cases—2d, consequently, the decision of the court of appeals in favor of Olmstead, made him and his associates the only lawful owners of the value of the prize Active, &c.—3d, the admiralty court of a state had no right to resist the lawful decree of the national court of appeals, and in resisting it, unlawfully detained property belonging to Olmstead.

On the 28th of December, 1778, judge Ross directed the marshal to sell the Active and her cargo, and to bring the proceeds into the court, to await its further orders; and, accordingly, on the 4th of January, 1779, Mathew Clarkson, marshal, deposited in the hands of the judge the sum of £49,981 2*s.* 5*d.* on account of the cargo of the said prize.

In this state of the business, having performed an extra-judicial act, and being doubtful of its justice or legality, the judge stopped short and refused not only to execute the sentence of the jury, but even to part with the share awarded by that jury to the state, until he received bonds of indemnity to secure him against the claim, which he foresaw Olmstead would pursue, under the decree of the court of appeals.

On the 1st of May, 1779, David Rittenhouse, at that time treasurer of Pennsylvania, executed the bond of indemnity required by judge Ross, and in consequence received from, him in loan-office certificates, one-fourth part of the prize. In this bond, Mr. Rittenhouse pledged himself, and not the state, nor its treasurer, to repay the money to Ross, in case the latter should thereafter be compelled by due course of law to pay that sum, agreeably to the decree of the court of appeals. Mr. Rittenhouse did not deposit the money in the state treasury, as he was bound to do, and would have done, if it belonged to the state; his accounts as state treasurer were finally settled, without his having paid this money into the treasury, and a balance of above $ 8000 was paid to him in 1783; he retained and drew interest upon the money, after he had ceased to be treasurer; it remained in the hands of

his heirs until the 19th of July, 1803; and at the bottom of the list of certificates, the following memorandum was found to have been made by Mr. Rittenhouse:

"*Note.*—The above certificates will be the property of the state of Pennsylvania, when the state releases me from the bond I gave in 1778, to indemnify George Ross, esq. judge of admiralty, for paying the fifty original certificates into the treasury, as the state's share of the prize."

From these facts it appears, that the judge of the Pennsylvania court did not consider the prize cause as closed by his decision; that David Rittenhouse did not consider the money paid to him as the absolute property of the state; and that the state itself did not consider its claim valid, or it would have compelled the judge, or at least the state treasurer, when he settled his accounts, to place the money at its disposal.

FIFTH POINT.

The consequent proceedings of Olmstead before our state courts, and the decision of the supreme court of Pennsylvania.

As the action of Olmstead was originally an admiralty one, that is as it was instituted against the proceeds of the prize Active, and not against any of the other claimants, so it continued to be in all its subsequent stages. It was the duty of Olmstead to pursue, and he could recover in no other way than by pursuing, those proceeds into whatever person's hands they might be transferred: and, accordingly, he instituted a suit in the court of common pleas of Lancaster county against the executors of George Ross, for the proceeds of the Active, which terminated in May term, 1786, in favor of Olmstead, with costs of suit. Thereupon the executors of Mr. Ross, brought an action in the supreme court of Pennsylvania, against Mr. Rittenhouse, upon the bond of indemnity given by the latter to secure the former. This action, which was maintained by means of Olmstead, and for the purpose of trying the questions involved in the highest court of our own state, was tried in April term, 1792, before judges M'Kean, Shippen and Yeates; and in the course of the proceedings, the following declarations were made, which merit notice:

"M'Kean. I conceive it proper to premise, that I took notice, at the time this action was first brought to trial in this court, "that when the business was before the court of appeals in December, 1778, I had the honor to be president of that court, but declined sitting on account of my connection with this state as chief justice, and otherwise; and that the same reason still subsisted: that the next thing to giving a righteous judgment, was to endeavor to give general satisfaction, which circumstance might not probably be attained by our decision of the present

controversy, *both court and jury being in some measure interested*, as they were all citizens of Pennsylvania"—for these reasons, I expressed a wish that some mode might be adopted for trying the cause in the supreme court of the United States; this proposition was then assented to, and a juror withdrawn: but it seems our expectations have been disappointed, and we are obliged at last to decide the controversy."

Judge M'Kean then entered into an exposition of the case, and declared his opinion, 1st, that the court of appeals of congress had no right to reverse the sentence of the admiralty court; 2d, that the appellants, Olmstead and others, had no way of obtaining the execution of the decree in their favor, but by the agency of the court of appeals or of an admiralty court.

Judge Shippen, in answer to the question, whether the court of appeals of congress, had a right to reverse the sentence of the admiralty court, and to adjudge the prize to Olmstead? said:

"As to this question, I own I am not convinced that the sovereign power of the nation, vested, by the joint and common consent of the people of the states of the union, with the exclusive rights of war and peace, and with the consequent and necessary powers of judging, in the last resort, of the legality of captures on the ocean, can, either in reason or sound law, be precluded from deciding an appeal, both of facts and law arising in cases of prize, merely because they had recommended to the states, to pass laws to establish courts of admiralty, for the trial of prize causes, in which the facts were in the first instance to be tried by a jury according to the course of common law: 1st, because, in the nature of things, and according to the course and practice of all civil law courts, all decisions in the courts of the last resort, upon appeals, are made upon a view and full consideration of both fact and law; 2d, because, otherwise no steady and uniform rules of decision could be established, and foreign nations could never know, or confide in the grounds of our decisions: and it does not appear to me material, that in the first instance all the parties were American citizens; and lastly, because in the present case, congress had explicitly reserved the power of deciding finally upon appeal in all cases."

Judge Shippen then accorded in the opinion of judge M'Kean, that an action could not be sustained, for recovering the proceeds of the Active, in a court of common law.

Judge Yeates, on the main question said:—"I am compelled to say, that the powers of congress must necessarily be supposed to have been co-extensive with the great objects, which America had then in view, and competent to protect and advance the united interests of the whole. It would have given me much pleasure, if this argument had been conducted in the supreme court

of the United States. We formerly indulged ourselves with hopes of it, when the jury were discharged in an action between the present plaintiffs vs. Thomas Leaming, in January term last, when the same points came in question. We may be considered, in some remote degree, as parties in the present suit, and the decision of the federal judges would probably have given more general satisfaction."

On the particular question, judge Yeates coincided with his colleagues, that an action could not be sustained in the supreme court of Pennsylvania, or any other common law court—the case being an admiralty one.

From these official declarations of the supreme court of Pennsylvania, these conclusions follow:

1. That the court, judges Shippen and Yeates, being in the affirmative, and judge M'Kean alone in the negative, were of opinion that the congressional court of appeals had a right to reverse the decision of the state admiralty court, and to adjudge the prize to Olmstead.

2. That the court considered Pennsylvania, or its judges, jurors and citizens, as in some degree parties interested against Olmstead, and therefore the above decision is the more remarkable and honorable to them.

3. That the court were unanimously of opinion, that the supreme court of the United States, would have been a competent tribunal, and a more impartial one than that of Pennsylvania, for deciding the controversy.

SIXTH POINT.

It will now be seen that, in obedience to those high opinions, and as Olmstead could not sustain his suit in a common law court, he proeeeded to institute and sustain an action in the courts having the declared jurisdiction.

And here it is necessary to show the foundation upon which the supreme court of Pennsylvania had laid their opinion. By the constitution of the United States, which was ratified by the unanimous consent of the states, on the 17th September, 1787, all the old courts were abolished, and a system entirely new introduced. The two first sections of the 3d article defined the new judicial powers, and an act of congress of Sept. 24th, 1789, organized the supreme district and circuit courts. By the 13th section of that act, the supreme court was invested with appellate jurisdiction from the United States inferior courts, and from the courts of the several states, in a variety of cases therein stated. By the same act, district courts were empowered to take exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. The unanimity with which the judicial branch of government was organized, was at once an evidence

of its excellence and its necessity; confidence and security revived, and those who had suits depending from the old courts, at length saw tribunals erected adequate to their examination, and capable of giving validity to their decisions.

Among the most deserving of those to whom hope was thus extended, were Olmstead and his associates. Having failed to get redress in the state courts, and having been advised by the supreme court of Pennsylvania to apply to the federal courts, they accordingly filed a bill in the district court of the United States for the state of Pennsylvania, on the 27th of May, 1802, against the heirs of David Rittenhouse, upon the bond of indemnity which that gentleman had given judge Ross, and which Olmstead had recovered from the executors of the latter. An answer was filed on the 12th of July following, by the executrices of Mr. David Rittenhouse, and the suit remained pending until the 14th January, 1803, when the district court decreed, that Olmstead was entitled to the amount of his claim, as awarded by the court of appeals of congress, with interest; and that, upon the compliance of the defendantts, the plaintiff should deliver to them the bond of indemnity.

On the 31st of the same month, the governor of this state informed the legislature, then in session, of the decision of the district court; in his message, he stated that this decree had been pronounced when the state had not been summoned to appear, or allowed an opportunity to be heard: but, even if it were true that the attorney-general had not sufficient notice of the state of the case, which, however, it not admitted, the force of this remark, if it had any, was done away by the succeeding declaration of the governor, that, "as the state had not been made a party to the suit, an appeal could not be sustained before the supreme court of the United States." Had the governor or the legislature a disposition to decide the matter, as the governor had himself expressed and recommended, when judge of the supreme court, in the case of Ross, &c. versus Rittenhouse, in 1792, the question might have been carried before the supreme court of the United States, on a suggestion on the question of jurisdiction, and there the point might have been discussed before judges, allowed by Mr. M'Kean himself, to be less partial and likely to give more general satisfaction than the courts of Pennsylvania. But he thought proper to urge a different course, and unhappily the legislature, which on most other points was at variance with him, in this instance coincided. A law was passed in April 1803, in direct opposition to the decree of the district court, ordering the heirs of Mr. Rittenhouse to place Olmstead's money in the treasury, upon a promise of protection in case of compliance; and accordingly the money was so placed.

Although Olmstead might have pressed the district court to execute its decree in his favor, no step was taken by him for four years after it had been pronounced. During that time, it was hoped that the governor or the legislature would take some measures calculated to bring the matter to a judicial termination; but a total indifference was observed by the state, and thereupon Olmstead urged the execution of the decree in his favor early in 1807. On the 29th of May of that year, the heirs of Mr. Rittenhouse made a suggestion in the district court—1st. That the legislature of Pennsylvania had passed a law on the 2d of April, 1803, demanding that part of the proceeds of the Active remaining in their hands, and offering to protect them in case of their compliance: 2d, that the executrices had complied, and paid the proceeds into the treasury of Pennsylvania: 3d, that the decree of the court was made ex parte and without jurisdiction. Thus it appears, that although the state had got the money and pledged itself to protect the heirs of Mr. Rittenhouse, it permitted them to remain in court, subject to all the costs and anxiety of such a situation for four years, without taking a single step to relieve them, or to put an end to the controversy.

Upon this suggestion being made, the judge of the district court felt the heavy responsibility under which he was placed, and being anxious that every possible opportunity should be had to correct his decision if illegal or unsound, he declined to issue process, and consequently Olmstead applied to the supreme court of the United States, requiring it to instruct the district judge to proceed and execute his decree. Accordingly, in February term, 1808, the supreme court directed the district judge to execute or to show legal cause for not doing so: the district judge then submitted the whole case for the decision of the supreme court, which after a deliberate consideration in February term, 1809, gave peremptory instructions to that judge to execute his decree, and process was thereupon issued.

Thus terminated the judicial proceedings in this long litigated case.

SEVENTH POINT.

The consequent conduct of the governor of Pennsylvania.

As soon as the governor heard that the marshal of the United States was about to arrest the executrices of David Rittenhouse, he issued orders, without previously consulting the legislature, although then in session, calling out a portion of the militia to resist "at the point of the bayonet" any attempt to execute the decree of the United States' court. A part of the militia obeyed the orders, but it deserves to be mentioned, that another part to its honor disobeyed them. An open and avowed resistance was for some time made, the military was made paramount to the

civil authority, and it is impossible to calculate the mischief that would have followed, had not certain means been taken which enabled the marshal to arrest the executrices of Mr. Rittenhouse.

Upon this summary of facts, these reflections offer themselves:

1. That the law of 1803, (which it has been alleged contemplated the employment of force) if it was passed with the intent to resist by military power, was in itself a dead letter, because it was in direct hostility to the constitution of the United States, which declares:

"Article 1, section 10. No state shall without the consent of congress, keep troops, unless actually invaded, or in such imminent danger as will not admit of delay."

And because the 2d section of the 6th article declares:

"This constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the *supreme law* of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

2. As the law of 1803, if it contemplated the keeping of troops, was thus void of itself, the governor was not only absolved from executing, but bound not to enforce it, because he had sworn to support the constitution and laws of the United States, which are, as above declared to be, paramount to any state constitution or law.

3. As the governor swore, according to the 3d section of the 6th article of the constitution of the United States, to support that constitution; as the constitution declares, that a state shall not keep troops; and as it declares that the United States' constitution shall be paramount to any state constitution or law, it follows, that in ordering out and keeping troops, and in resisting the execution of the laws of the United States, the constitution of the United States was violated.

EIGHTH POINT.

The pretexts urged to justify this conduct

The justification is rested upon two positions—1st, that the congress court of appeals had no authority to reverse the decree of the state admiralty court; 2d, that the state of Pennsylvania was a party, and therefore that the cause was not cognisable before any court of the United States.

The facts stated in the foregoing part of this report, must have prepared the mind to meet and reject those pleas of justification as unsound and frivolous: but a more precise answer will now be given to each.

As to the first—the court of appeals of congress reversed the decree of the state admiralty court, and the admiralty court refused to abide by that decision. Here the United States and

Pennsylvania were at issue; how was the matter to be determined, for it is evident from all parties having pleaded before the court of appeals, that Ross's decision was not considered final? was it to be decided by the bayonet? no, that was a resort never thought of until our day. If the state chose to persist, judicial proceedings alone could be correctly or lawfully entered into; or, in the changes of the form and rules of government, the state ought to have demanded, or at least used its influence to obtain, an express provision for the case. But no judicial measures were regarded, nor was the position of the state changed by any alteration in the rules of government.

The articles of confederation, although proposed in July 1778, were not ratified or in force until 1781: and in the interval, congress exercised the right of deciding upon appeals. The 9th article is in these words: "The United States in congress assembled, shall have the sole and exclusive right and power (among other sovereign acts) to appoint courts for the trial of piracies and felonies committed on the high seas, and establishing courts, for receiving and determining finally, appeals in all cases of capture: provided that no member of congress shall be a judge of any of the said courts."

This article specifically deprived the states of all power in maritime cases, as they were before virtually deprived by the establishment of a national government. But, some stress has been laid upon the proviso in this article, as if the adoption of the principle, contained in it, in 1781, could, in an *ex post facto* manner, affect the decision made by the court of appeals in 1778, and confirmed by congress in 1779, or as if this proviso meant any thing else than a relinquishment of the congress court of appeal, and a prohibition against a member of congress acting as judge in any of the new courts to be established in 1781.

If the ratification of the articles of confederation, therefore, had any effect whatever upon the case of Olmstead, it was in favor of the United States' right to determine and execute upon an appeal, and against the pretensions of the state to resist that jurisdiction.

But no steps were taken either by Olmstead, or by congress, upon the ratification of the articles of confederation: the controversy subsisted, and Mr. Rittenhouse held the money as his own, until he should be released from the bond given to Mr. Ross, when, and when only, said Mr. Rittenhouse, in his note, the money *will be* the property of the state.

At length, on the 17th September, 1787, the constitution of the United States was adopted by the unanimous consent of all the delegates from all the states, and by none more zealously than by those of Pennsylvania. The 2d section of the 3d article

of this instrument, will explain the effects, this great event had upon the case of Olmstead.

"The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies, to which the United States should be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or citizens thereof, and foreign states, citizens and subjects."

"In all cases, affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases above mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make."

The influence and force of those provisions, with relation to the case of Olmstead, cannot but be obvious—the controversy continued, the plaintiff could not get his money; when, by assenting to the above article, Pennsylvania put it in his power to bring the matter to issue, in all the due forms of law.

Under the authority above vested, a law was passed by congress, distributing the judicial powers, which provided that the district court of the United States, should have "exclusive original cognizance, of all civil causes of admiralty and maritime jurisdiction."

Olmstead's case was an admiralty one: therefore, in applying to that court, Olmstead fulfilled the duty and exercised the right contemplated by the constitution, and the court in deciding and executing, acted in perfect consonance with its duty and its authority.

In this review of the first ground of alleged justification, no notice has been taken of the case, determined in the supreme court of the United States, in the year 1795, Penhallow and others, *vs.* Doane's administrators. This case is so fully and ably reported in 3d Dallas, page 54, that even an abstract would be unnecessary in this place; it is sufficient to say, that in addition to the almost unanimous opinion of the congress of 1776, and to the above quoted opinion of the supeme court of Pennsylvania, the supreme court of the United States, (in a case where New Hampshire was concerned, and upon which we believe, none of the judges of the supreme or district courts of the United States, who were concerned in Olmstead's case, and to whom

such exceptions are made, sat in judgment) added the weight of its opinion, that the court of appeals of congress had, of right, the authority to reverse the decrees of the inferior admiralty courts.

2. The second ground, of alleged justification, is, that the state was a party to Olmstead's case, and that therefore the courts of the United States were inhibited, by the 11th article of the amendments of the constitution, from taking cognizance of it. What says the 11th article?

"The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity*, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state."

Without attempting to show that the case of Olmstead was not at any time or in any shape "commenced or prosecuted" against the state; without explaining the iniquity or absurdity of a doctrine, which, if adopted, would lead to the ruin of individuals, by the mere averment of a latent state interest; let us meet this position on its broadest ground, and compare the 11th amendment with the second section of the third article of the constitution, before quoted, and which it was intended to alter.

The article, when first adopted in 1787, authorised the judicial power to extend to "*all cases in law and equity*," and to "all cases of admiralty and maritime jurisdiction," between a state and citizens of another state. The 11th amendment was suggested and adopted in consequence of a difficulty, which arose in a suit at common law, in which the state of Georgia was a party, and was cast; in this case the judgment acted directly upon the state, a difficulty arose as to the ability or means to execute it, and it was removed or at least any other instance prevented by the adoption of the amendment. But the amendment did not extend beyond the evil experienced; no difficulty had arisen relative to that part of the 3d article, granting admiralty jurisdiction, and therefore that part was *retained* and *not revoked*.

And that the right of the United States' courts, to try all cases of admiralty and maritime jurisdiction, was correctly reserved to them, in constitution and amendment, must be evident from the consideration of the facts, that all nations are interested in an admiralty action, that the suit is commenced and maintained against the prize, and that the assertion of an interest therein by a state, ought not to arrest the power of deciding upon the question out of that court, which represented to the world the whole American people.

In every view of this point, therefore, there is no force in the second alleged ground of justification. And, even if this representation did not sufficiently establish its futility, the circumstan-

ces of the whole case would of themselves prove that the state was at no time a party to the suit; the action was brought, as all admiralty suits are brought, against the proceeds of the prize; judge Ross did not consider the money paid to be the property of the state, or he would not have refused to deliver it without a bond of indemnity; the executors of judge Ross did not pretend that the state had any interest in the matter, nor did they refuse to give up to Olmstead the bonds given by Mr. Rittenhouse; Mr. Rittenhouse did not recite upon the certificates that they were the property of the state, but that they would be, when the state released him from the bond which he gave to Mr. Ross—and when were his heirs released? In 1803, after the highest authorities of the union had confirmed the decree of the court of appeals, after every opportunity to meet the question had been evaded by Pennsylvania, after Olmstead was made beyond contradiction, the sole and only owner of the property, which he had been for thirty years in pursuit of. The state itself must not have considered itself a party to the suit, or it would not have tacitly permitted so large a sum of money to remain in the hands of judge Ross and Mr. Rittenhouse, when those gentlemen were in office, after they had ceased to be officers, and after the money had passed to the heirs of the latter. And had the state been a party, there is no doubt but that the appeal to the supreme court of the United States, suggested by governor M'Kean, in his message of 1803, would have been made; but it cannot be made, said that gentleman, "Pennsylvania not being made a party to the suit."

Both the excuses, therefore, fail to palliate, much less to justify the unconstitutional and outrageous resistance by military force, to the decrees of the duly organised courts of our country. And, even if it were for one moment conceded that the courts exercised an illegal authority, the constitution itself pointed out a mode for obtaining redress or inflicting punishment; the enlightened authors of that instrument, having taken care to prevent the possibility, as they thought, of a recurrence to the bayonet.

From a deliberate consideration of the violations of the constitution before specified, the house of representatives of Pennsylvania, cannot but pronounce them to have been the result of a determination, (whether from ignorance or design, they leave the people to determine) to wrest the law and authority altogether from the United States, and to hold forth an example of internal rebellion, at a moment when we were menaced with a foreign war.

We, therefore, the representatives of the people of Pennsylvania, agree to, and adopt the following resolutions, as well to

vindicate the character of the state in the eyes of the union and of the world, as to transmit to our constituents and to our successors the sentiments, by which we are actuated.

WHEREAS, the delegates of the people of the United States, in general convention assembled, proposed a form of government; vesting certain powers and functions in the several authorities thereby constituted; reserving to the states such powers as were not therein assumed or inconsistent therewith; recognising to the several state governments the powers which the people of each state should vest in them; and finally reserving to the people the powers not granted to the general or state governments: and whereas the people themselves cordially adopted and approved that form of government.

1. Resolved, that the people of Pennsylvania remain sincerely attached to the constitution and laws of the United States, to the union of the states, and to the constitutional rights of the states individually; and that the people are bound by patriotism, and public functionaries by their oaths also, to maintain the same inviolate.

2. Resolved, that the constitution of the United States and the laws made under its authority, are the supreme laws of the land and that any opposition thereto, or to the decisions of the courts established by them, in any other manner than that which the constitution itself prescribes, is an high misdemeanor, and if made by arms, deserves the severest punishment that our laws contemplate for such offences.

3. Resolved, that as the constitution of the United States, provides a remedy for the abuses of the laws, and for the punishment of those who abuse or pervert their constitutional functions, any resistance to the decrees of the United States' courts, made by those sworn to maintain the constitution, is an act calling for their impeachment.

4. Resolved, that until an alteration shall be made in the 3d. article of the constitution of the United States, which vests in the supreme court an appellate jurisdiction, it is the duty of every good citizen to respect and obey all proceedings and decisions, of the constituted cours of law, issuing from the said court, in its appellate capacity; and that the constitution and laws establishing those courts are as much the law of this state, and as binding upon its officers who have sworn to support them, as any part of the state constitution or laws.

5. Resolved, that as the amendment, of that part of the constitution of the United States, establishing the judiciary, which was proposed by this state at the last session of the legislature, has been rejected by all the states, from whom answers have been

received, and is now under consideration in the states from which answers have not been received, it would be inexpedient if not ridiculous to make a similar proposition at this time.

6. Resolved, that all declarations of submission to the laws and attachment to the constitution, which are contradicted by facts and the most solemn decisions of a government of laws, are calculated to degrade representative government, to disgrace this state, and to stigmatise the legislature with the reproach of duplicity and falshood: and that we deprecate any further attempt to oppose or evade the laws or decisions of the constituted authorities of our country, as shameful in itself, pernicious to our republican institutions, calculated to produce a severation of the states, and to encourage foreign insults and aggressions.

The foregoing substitute having been read, a motion was made to proceed to the immediate consideration of it.

Mr. Frailey said: Mr. Speaker, I have been perfectly silent on this question. I have not said a single word on the merits of the resolutions, and I don't know that I shall; but as we have just heard a very lengthy substitute read, I think that some time ought to be given to us for deliberation. I think it nothing but reasonable that we should have a few hours to reflect on this business. I cannot suppose there is a single member on this floor, that is prepared to vote at this time. The substitute is very lengthy and embraces matter entirely new. I am well aware that there are members on this floor who would prevent the substitute from having any further consideration, but I hope that time will be given for reflection. I do not know how I shall vote on this question eventually; but if I vote either way, at this time, I shall vote in the dark, for I have not been able in hearing the substitute read, to form a proper judgment of it. I move you, sir, that the original resolutions, together with the substitute, be postponed for the present.

Mr. Frailey's motion was seconded by Mr. Summers. After a short argument between Messrs. Brown Frailey and Thompson, Mr. Brown in opposition to the motion, and Messrs. Frailey and Thompson in favor, the yeas and nays on it, were as follow:

Yeas—Messrs. Alden, Bethel, Cochran, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Frailey, Freidt, Funk, Gettys, Gisch, Graham, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Sherry, Pennock, Pollock, Ross, T. Smith, Spayd, Steele, Summers, Thompson and Tod—29.

Nays—Messrs. Alter, Bard, Brooke, G. Brown, Brown (Greene) Brown (Mifflin) Clemens, Colmery, Cunningham, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Griffin, Hanna, Johnson, Jordan, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, M'Kinney, Mitchell, Montgomery,

Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsay, Rankin, Rupert, Ruth, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Weiss, Weygandt, Whiteside, Welles, Wilson and Weber, speaker—63.

So it was determined in the negative.

The question now recurring, "Will the house agree to postpone the original resolutions together with the preamble, for the purpose of introducing the substitute," the yeas and nays were required by Mr. Tarr and Mr. Thompson, and were as follow:

Yeas—Messrs. Alden, Bethel, Cochran, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Funk, Gettys, Gisch, Graham, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Sherry, Pennock, Pollock, Ross, T. Smith, Spayd, Summers and Thompson—25.

Nays—Messrs. Alter, Bard, Brooke, G. Brown, Brown (Greene), Brown (Mifflin), Clemens, Colmery, Cunningham, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Frailey, Friedt, Griffin, Hanna, Johnson, Jordan, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, M'Kinney, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsey, Rankin, Rupert, Ruth, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Steele, Stoy, Sutton, Tarr, Trevor, Tod, Wallace, Weaver, Weiss, Welles, Weygandt, Whiteside, Wilson and Weber, speaker—67.

It being determined in the negative, the first resolution was, consequently, again under consideration.

Mr. Thompson. Mr. Speaker, I move to amend the resolution so that it may receive the concurrence of the senate. As we are to express the sentiment of this legislature, approbating the conduct of a former legislature, it would be wrong not to give it all the force of a legislative act. I trust it will be sent to the senate, and after their concurrence that it will obtain the signature of the governor also. I don't know whether the gentlemen are afraid to trust it to the other branch of the legislature; but I make the motion in order to try it. If the gentlemen in favor of these resolutions refuse to submit them to the consideration of the senate, the inference is plain, that they are afraid to trust this precious offspring out of their own hands. I therefore move to insert after the word resolved, the words, "by the senate and house of representatives."

Mr. Todd seconded the motion, and being joined by Mr. Summers, called for the yeas and nays. They were as follow:

Yeas—Messrs. Alden, Alter, Bethel, Brown (Greene), Cle-

mens, Cochran, Cunningham, Davis, Dingman, Dorrance, Duane, Dysart, F. Engle, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Graham, Jordan, Kimmel, Kirby, Lawrence, Lobingier, Marks, Maxwell, M'Call, M'Comb, M'Alevy, M'Kinney, M'Sherry, Negley, Patterson, Pennock, Piper, Pollock, Ross, Ruth, Shindel, John Smith, T. Smith, Spayd, Steele, Summers, Tarr, Thompson, Tod, Weiss, Weygandt and Whiteside—51.

Nays—Messrs. Bard, Brooke, G. Brown, Brown (Mifflin), Colmery, Dale, Dechart, F. Evans, Forster, Griffin, Hanna, Johnson, Kerr, Kurtz, Leech, Mitchell, Montgomery, Nace, Newhard, Odenheimer, Phillips, Ralston, Ramsey, Rankin, Rupert, Scroggs, Shearer, Sheetz, Shoemaker, James Smith, Starrett, Stoy, Sutton, Trevor, Wallace, Weaver, Welles, Wilson, and Weber, speaker.—39.

So it was determined in the affirmative.

Mr. Leech hoped the gentleman from the county of Philadelphia would go on at this stage of the business to propose all the amendments he intended.

Mr. Thompson. As the gentleman from Montgomery has hoped that I would go on and offer further amendments, I move to strike out the words "illegal and unconstitutional conduct of the same in the case of Gideon Olmstead," and insert, in place thereof, these words: "*calling out an armed force against the authority of the United States.*"

Mr. Bard asked, if the amendment was not at this time inadmissible?

Mr. Thompson said, he had no great zeal to press it. He would withdraw it.

Mr. Brown. I don't think the gentleman ought to have leave to withdraw it. If the gentleman has got sick of his motion, I don't think the house have, and I hope he will not be permitted to withdraw it.

Mr. Duane thought the amendment a very good one. He moved to preface it with the words "unconstitutional conduct of the governor," [in calling out the armed force, &c.]

Mr. Pennock, of Delaware, thought the amendment inadmissible, as the 15th rule of the house declares that "No amendment shall be admitted by the speaker, which tends to destroy the general sense of the clause or motion."

Mr. Thompson's motion was not further acted on.

Mr. M'Kinney now repeated his former objection to this resolution, declaring that it was not in his opinion consistent with the oath he had taken, nor could he reconcile it to his conscience, to vote that the judges had acted illegally and unconstitutionally.

Some other gentlemen opposed to the *original resolutions*, be-

ing about to speak, more than twelve *in favor* of them rose together, and called for "*the previous question.*"

[By the 5th rule of the house, any twelve members rising for that purpose, may call "*the previous question.*" It precludes all amendment or argument on the original subject; and is decided without debate.]

Mr. Frailey. I have had no opportunity, Mr. Speaker, of offering my sentiments on this subject. I have not given my opinion yet; but if the gentlemen are determined to call the previous question they are welcome; for my part I wish that 30 would call it. They are welcome to take this method of preventing members from giving their sentiments.

The Speaker (Mr. Weber, of Montgomery), said, there could be no argument on the previous question nor on the resolution.

Mr. Duane. Then, sir, we are to be gagged?

Mr. Brown. Yes. The gentleman knows that the question is only on the first resolution, and on that resolution the gentlemen's mouths have been open long enough.

On the question, "shall the main question be now put?" Mr. Tod called for the yeas and nays, and was seconded by Mr. Ralston.

The Speaker doubted whether the yeas and nays could be called on the previous puestion.

Mr. Tod. The constitution settles that point. It provides that whenever any two members call the yeas and nays, on any question, they shall be entered on the journals.

The yeas and nays on the question, "shall the main question be now put?" were as follow:

Yeas—Messrs. Alter, Bard, Brooke, G. Brown, Brown (G.) Brown (Mifflin), Clemens, Colmery, Cunningham, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Griffin, Johnson, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsay, Rankin, Rupert, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Weiss, Weygandt, Whiteside, Wilson and Weber, speaker—59.

Nays—Messrs. Alden, Bethel, Cochran, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Graham, Hanna, Jordan, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Kinney, M'Sherry, Pennock, Pollock, Ross, Ruth, T. Smith, Spayd, Steele, Summers, Thompson, Tod, and Welles—33.

So it was determined in the affirmative.

And on the main question being put, viz—will the house adopt said resolution as amended?

The yeas and nays were required by Mr. Lobingier and Mr. Frailey, and are as follow, viz.

Yeas—Messrs. Alter, Bard, Brooke, G. Brown, Brown (G.) Brown (Mifflin) Clemens, Colmery, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Griffin, Hanna, Johnson, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsay, Rankin, Rupert, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Welles, Weiss, Weygandt, Whiteside, Wilson and Weber, speaker—59.

Nays—Messrs. Alden, Bethel, Cochran, Cunningham, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Graham, Jordan, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Kinney, M'Sherry, Pennock, Pollock, Ross, Ruth, T. Smith, Spayd, Steele, Summers, Thompson and Tod—33.

So it was determined in the affirmative.

SATURDAY, FEBRUARY 3.

The house again resumed the consideration of the report of the committee on the case of Gideon Olmstead and others; and the second resolution being under consideration, [See pages 77 and 78,]

A motion was made by Mr. Brown (Greene) and seconded by Mr. Duane, to strike therefrom after the word "consolidate," these words "them in the," and insert in place thereof these words, "these states into one," which was agreed to.

And on the question—Will the house agree to the resolution as amended?

The yeas and nays were required by Mr. Duane and Mr. Brown (Greene), and are as follow, viz.

Yeas—Messrs. Alden, Alter, Bard, Bethel, Brooke, G. Brown, Brown (Greene), Brown (Mifflin), Clemens, Cochran, Colmery, Cunningham, Dale, Davis, Dechart, Dingman, Dorrance, Duane, Dysart, Edenborn, F. Engle, F. Evans, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Grafius, Graham, Griffin, Johnson, Jordan, Kerr, Kirby, Kurtz, Lawrence, Leech, Lobingier, Marks, M'Call,

M'Comb, M'Alevy, M'Kinney, M'Sherry, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Pennock, Phillips, Piper, Pollock, Ramsey, Rankin, Ross, Rupert, Ruth, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, T. Smith, Spangler, Spayd, Starrett, Steele, Stoy, Sutton, Tarr, Thompson, Tod, Trevor, Wallace, Weaver, Weiss, Welles, Weygandt, Whiteside, Wilson and Weber, speaker—88.

Nays—Messrs. Kimmel and Maxwell—2.

So it was determined in the affirmative.

The third resolution being under consideration, [See page 78,]

A motion was made by Mr. M'Call and seconded by Mr. Patterson, to amend the same by inserting after the word "that" in the first line, these words, "the governor was justifiable in," which was agreed to.

A motion was then made by Mr. M'Call and seconded by Mr. Patterson, to strike from the same line the words "of the governor," and insert in lieu thereof the words "which he made," which was also agreed to.

A motion was then made by Thompson and seconded by Mr. Duane, to amend the same by inserting after the word "made" these words, "in calling out an armed force to resist the authority of the United States."

And on the question—will the house agree so to amend?

The yeas and nays were required by Mr. Tod and Mr. Thompson, and are as follow, viz.

Yeas—Messrs. Bethel, Cochran, Duane, Edenborn, F. Engle, Gettys, Spayd, Summers and Thompson—9.

Nays—Messrs. Alden, Alter, Bard, Brooke, G. Brown, Brown (Greene), Brown (Mifflin), Clemens, Colmery, Cunningham, Dale, Davis, Dechart, Dingman Dorrance, Dysart, F. Evans, J. Evans, Forster, Frailey, Friedt, Funk, Gisch, Grafius, Graham, Griffin, Hanna, Johnson, Jordan, Kerr, Kimmel, Kirby, Kurtz, Lawrence, Leech, Lobingier, Marks, Maxwell, M'Call, M'Comb, M'Alevy, M'Kinney, M'Sherry, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Pennock, Phillips, Piper, Pollock, Ralston, Ramsey, Rankin, Ross, Rupert, Ruth, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, T. Smith, Spangler, Starrett, Steele, Stoy, Sutton, Tarr, Tod, Trevor, Wallace, Weaver, Weiss, Welles, Weygandt, Whiteside, Wilson and Weber, speaker—85.

So it was determined in the negative.

A motion was then made by Mr. Thompson and seconded by Mr. Summers, to postpone the said resolution generally, which was disagreed to.

And on the question—will the house agree to the resolution as amended?

The yeas and nays were required by Mr. Piper and Mr. Scroggs, and are as follow, viz.

Yeas—Messrs. Alter, Bard, Brooke, G. Brown, Brown (Greene), Brown (Mifflin), Clemens, Colmery, Cunningham, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Griffin, Hanna, Johnson, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, Mitchell, Montgomery, Murray, Nace, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsey, Rankin, Rupert, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, John Smith, James Smith, Starrett, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Weiss, Welles, Weygandt, Whiteside, Wilson and Weber, speaker—60.

Nays—Messrs. Alden, Bethel, Cochran, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Grafius, Graham, Jordan, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Kinney, M'Sherry, Pennock, Pollock, Ross, Ruth, T. Smith, Spayd, Steele, Summers, Thompson and Tod—33.

So it was determined in the affirmative.

The fourth resolution being under consideration, [See page 78,]

A motion was made by Mr. Weaver and seconded by Mr. Thompson, to strike therefrom these words, "and unconstitutional," which was disagreed to.

A motion was then made by Mr. Brown (Greene) and seconded by Mr. Thompson, to postpone the said resolution generally.

And on the question—Will the house agree so to postpone?

The yeas and nays were required by Mr. Tod and Mr. Cunningham, and are as follow, viz.

Yeas—Messrs. Alden, Alter, Bethel, Brooke, Brown (Greene), Cochran, Cunningham, Davis, Dingman, Dorrance, Duane, Dysart, Edenborn, F. Engle, J. Evans, Forster, Frailey, Friedt, Funk, Gettys, Gisch, Grafius, Graham, Johnson, Jordan, Kimmel, Kirby, Lobingier, Maxwell, M'Call, M'Comb, M'Alevy, M'Kinney, M'Sherry, Mitchell, Montgomery, Patterson, Pennock, Piper, Pollock, Ross, Ruth, John Smith, T. Smith, Spangler, Spayd, Steele, Stoy, Summers, Tarr, Thompson, Tod, Weaver, Weiss, Welles, Weygandt, Whiteside and Wilson—58.

Nays—Messrs. Bard, G. Brown, Brown (Mifflin), Clemens, Colmery, Dale, Dechart, F. Evans, Griffin, Hanna, Kerr, Kurtz, Lawrence, Leech, Marks, Murray, Nace, Negley, Newhard, Odenheimer, Phillips, Ralston, Ramsey, Rankin, Rupert, Scroggs, Shearer, Sheetz, Shindel, Shoemaker, James Smith, Starrett, Sutton, Trevor, Wallace and Weber, speaker,—36.

So it was determined in the affirmative.

The fifth resolution being under consideration, [See page 78,]

A motion was made by Mr. Thompson and seconded by Mr. F. Engle, to postpone the same generally.

And on the question—will the house agree so to postpone?

The yeas and nays were required by Mr. Summers and Mr. Gisch, and are as follow, viz.

Yeas—Messrs. Alden, Bethel, Cochran, Cunningham, Dorrance, Duane, Edenborn, F. Engle, J. Evans, Frailey, Friedt, Funk, Gettys, Gisch, Graham, Kimmel, Kirby, Lobingier, Maxwell, M'Comb, M'Sherry, Nace, Pennock, Pollock, Ross, Ruth, Sheetz, T. Smith, Spayd, Summers, Thompson and Tod—32.

Nays—Messrs. Alter, Bard, Brooke, G. Brown, Brown, (Greene), Brown (Mifflin), Clemens, Colmery, Dale, Davis, Dechart, Dingman, Dysart, F. Evans, Forster, Grafius, Griffin, Hanna, Johnson, Jordan, Kerr, Kurtz, Lawrence, Leech, Marks, M'Call, M'Alevy, M'Kinney, Mitchell, Montgomery, Murray, Negley, Newhard, Odenheimer, Patterson, Phillips, Piper, Ralston, Ramsey, Rankin, Rupert, Scroggs, Shearer, Shindel, Shoemaker, John Smith, James Smith, Spangler, Starrett, Steele, Stoy, Sutton, Tarr, Trevor, Wallace, Weaver, Weiss, Welles, Weygandt, Whiteside and Weber, speaker—61.

So it was determined in the negative.

The resolution was then agreed to.

The sixth resolution and preamble were severally considered and agreed to, and

Ordered, That the clerk present the same to senate for concurrence.

IN SENATE.

SATURDAY, FEBRUARY 7, 1810.

On motion of Mr. Burrows and Mr. Lacock, the resolutions relative to the case of Gideon Olmstead (as received from the house of representatives) were read;

Whereupon, on motion of Mr. Burrows and Mr. Humphreys, the said resolutions were referred to the same committee to whom was referred the second item of the report of the committee on the governor's message on that subject. This committee consisted of Messrs. Lacock, Weaver, Roberts, Palmer and Preston.

TUESDAY, FEBRUARY 20.

On motion of Mr. ROBERTS and Mr. LACOCK, the following resolution was twice read and adopted:

Resolved, That the auditor general lay before the senate an abstract of the accounts of general Michael Bright, for the pay and subsistence of the militia employed by him under the direction of the governor, for the protection of the persons and property of the executrices of David Rittenhouse, late state treasurer, deceased; stating the principles on which said accounts have been settled.

THURSDAY, FEBRUARY 22.

The speaker laid before the senate a letter from the auditor-general, with the statement therein referred to, which were read as follow, viz.

To the honorable the senate of Pennsylvania.

GENTLEMEN,

In obedience to your resolution of yesterday, I respectfully submit herewith, a copy of the accounts therein required; the settlement was conducted upon the principles of the military system of the United States, under the authority and sanction of the militia law of this state.

The annexed statement exhibits the appropriation and extent of the disbursement of the same in the case of Olmstead.

I have the honor to be,
Gentlemen,
Your most obedient servant,

GEORGE BRYAN.

Auditor-general's office,
22d February, 1810.

Appropriated by the act of the 4th of April, one thousand eight hundred and nine, "to enable the governor to carry into effect all and every engagement of this commonwealth, touching

the premises, in such manner as may appear to him to be advisable, just, and proper, and to meet all contingent expenses which may arise," &c. - - - - - - $ 18,000 00

Of which has been paid, viz.

Elizabeth Sergeant and Esther Waters, executrices, &c.	14,378 75	
Michael Bright,	1,000	
Ditto.	442 39	
Jared Ingersol, (fee)	500	
Robt. M'Elwee, (expenses incurred under direction of the governor.)	20	
		16,341 14
Unexpended,		$ 1,658 86

The commonwealth of Pennsylvania in account with Michael Bright, brigadier-general.

DEBTOR.

To cash paid Abraham Kline, wood, &c. as per voucher,	No. 1.	$ 21 80
Thomas Town, stationary,	2.	2 62
Jacob Hann, rent for guard-house,	3.	8 25
John Binns, advertising,	4.	2 50
A. Simmons, expenses coming to Lancaster with accounts of gen. Bright,	5.	13
Officers and men, as per George W. Bartram, pay-masters statement and certificate (herewith forwarded) on the pay roll,		1609 18
		$ 1657 35

CREDIT.

1809. April 15. By cash on account,	$ 1000 00	
By balance due,	657 35	
		$ 1657 35

X

Amount of account rendered by general Bright,			$ 1657 35
Deduct from the pay and rations of those officers and men which are charged after the discharge of the detachment, viz.			
General Bright,	$ 547 50		
Should be,	397 50		
		150 00	
Wm. Cole,	21 20		
Should be,	11 67		
		9 53	
C. Westfall,	19 70		
Should be,	10 83		
		8 87	
D. Phyle,	17 07		
Should be,	9 53		
		7 54	
J. Atkinson,	16 70		
Should be,	9 17		
		7 53	
C. Hong,	16 70		
Should be,	9 17		
		7 53	
J. Knipe,	16 70		
Should be,	9 17		
		7 53	
A. Ogden,	16 70		
Should be,	8 17		
		7 53	
S. Wilkins,	16 70		
Should be,	9 17		
		7 53	
			213 59
			1443 76
By warrant issued to general Bright,			1000 00
			443 76
Page 3 of the pay-roll less added by			1 47
Unpaid more than in the account of gen. Bright by			2 84
Due general Bright			$ 442 39

Settled and entered.

GEORGE BRYAN.

Auditor-general's office, 19th February, 1810.

Approved and entered.

WILLIAM FINDLAY.

Treasury-office, February 19, 1810.

SATURDAY, MARCH 3.

Mr. LACOCK from the committee in Olmstead's case, made the following report:

That while on the one hand considerations exist, that would incline the committee to suffer the injustice the state has sustained, as well as the injury done to her rights by the decree of the United States' court, in the case of Olmstead, to rest without further notice; yet, on the other, to allow in addition to this injustice and violation of those rights, the views and acts of the public authorities of the commonwealth to be misconceived, or manifestly misrepresented, without bringing before senate the result of a careful examination into the subject, is what they cannot reconcile with a sense of duty.

Sundry resolutions were passed by the general assembly of this commonwealth on the 3d of April, 1809, in respect to, and arising out of, Olmstead's case, which the governor was directed to transmit to the president of the United States, to be laid before congress, and to the executives of the several states to be laid before their respective legislatures. The result has been, that when a proposition was made by one of our representatives in congress to print the message, it was negatived at the suggestion of another; all further proceedings in the case remain suspended; and the four states from whom we have received intelligence, have decided against the proposed amendment to the constitution of the United States.

Such evidence of disapprobation, requires a review of the measures pursued and principles adopted by the state: If they have been wrong, it is the duty of the legislature to relinquish further proceedings, but if they have been just and proper, an honest and prudent continuance of endeavors to prevent a recurrence of evil, by an amendment to the constitution is equally a duty.

Two methods lie open to be pursued.

First. An endeavor to bring the offenders before the high court of impeachment, (a tribunal competent to judge and to punish) in order to discourage future aggression. But the principles established in a recent trial, before that tribunal, to wit: "That to prove error, was insufficient to convict, unless it were also proved that corruption of heart had produced the error, (which is almost impossible) leaves but little room for the expectation of an issue to such a proceeding, which would justify the consequent trouble and expense.

The second method would be to endeavor to obtain an amendment of the constitution of the United States that would remove

the temptation, to usurp jurisdiction, from the judges, by circumscribing more difinitely their discretion.

Punishment inflicted is not intended to repair injury so much as to prevent future crimes; the most effectual preventative must be to destroy the motive. Penalties are never provided before experience has proved the necessity of them. Wise governments will cautiously anticipate what the public interest requires never should happen, nor will they hesitate when evil has been felt, to take such measures as will prevent its recurrence.

To the correctness of the facts or justness of the conclusions in the resolutions of the legislature of last year on this subject, nothing need be added to expose the injustice and unconstitutionality of the proceedings and decisions of the United States' courts prior to that date. The judicial transactions which have subsequently taken place, have afforded further latitude for enquiry and an opportunity to the circuit court for justification of the decree.

The committee after examining the opinion of the court cannot find any fact adduced or reason assigned that invalidates the sentiments of the last general assembly, but are constrained to observe, that the features of the opinion carry evident marks of the legal subtlety necessarily used to conceal error, and supply the place of open, candid, and sound argument.

The court, as if fearful of maintaining the broad ground of unlimited jurisdiction over the case, takes a distinction (where none really exists) between "law and equity" and "admiralty and maritime jurisdiction." That while in the former case where the state is a party, they can exercise no jurisdiction; in the latter, even though a state were equally interested, they assert there is no prohibition.

The third article of the constitution of the United States, section second, provides that "the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made or to be made by their authority, to all cases of admiralty or maritime jurisdiction" The eleventh amendment of the constitution of the United States declares "that the judicial power of the United States shall not extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The state of Pennsylvania and Gideon Olmstead were the parties, and no others, in the case of the sloop Active; the amendment above recited prohibits the jurisdiction of the federal courts in suits thus commenced in "law or equity;" but the judges, pressed by the necessity of the case, and determined to sustain their own authority even at the expense of the sovereign

rights of a state and the constitution of the union, gravely declare that all cases in "law or equity" do not comprehend cases in "admiralty and maritime jurisdiction;" Thus making the individual states amenable in the federal courts in actions perhaps trifling and unimportant in their nature, and subordinate in their consequences: could this be the design of the amendments? Surely not.

But admitting for a monent, that law and equity do not apply to admiralty and maritime jurisdiction, the courts have no retrospective power, except in the case of treaties made and debts contracted by the confederacy of states. In every thing else the establishment of the federal government forms a new era, and is entirely prospective. From every view the committee have been able to take of the subject, the result is, a conviction on their minds, that the judges of the United States' courts have usurped jurisdiction in the case arising out of the capture of the prize sloop Active, whereby the federative principle is threatened with destruction, the guarantee of a republican form of government to the states, by that of the union trodden down, and the treasury of the state forced open, contrary to the consent of the legislature.

A proceeding thus violent could not, ought not to have been tamely submitted to by the state. When an unconstitutional attempt was making to wrest money from the treasury, was she to sit inactive and see it done? Is an individual to suffer his coffers to be broken open and rifled by a judicial officer lawlessly, and not resist? Every principle of reason and justice forbids it. He may resist lawless aggression at all hazard, and afterwards demand the punishment of the aggressor. Is a high contracting party to the union, which has reserved to herself a republican form of government and the consequent disposal of her revenues, to be placed in a worse situation than an individual? and must she submissively bow at the footstool of men who aspire "to unite the office of censor with the power of dictator?" It may well be hoped not. The state that would have yielded to such violence without resistance, would have been unworthy of freedom.

From the message of the governor, however, it appears, that the resistance made was ineffectual; that in the event the money was not only wrested from the treasury, but the citizens who were called upon in the capacity of militia, to resist the unconstitutional decree, were criminally prosecuted, convicted, and punished, before and by the same judges, who in part had made the decree. The issue has been unfortunate for the cause of justice and the rights of the individual states: but a people worthy of self-government, will not loose sight of the wrong in

the splendor of judicial triumph. The case was new and difficult, the moment of its occurrence, from other causes, one of a national ferment.

The state, presuming the judges would have so far respected her remonstrance, as to have waited to see whether congress would have taken up the subject, and from a sincere and virtuous attachment to the union, forbore to take such measures as would have made the defence more efficient. It was not, your committee believe, because the legislature doubted the justness of the measure, that they did not go further, but from a wish not to do more than would give a chance of justice, and their fellow citizens of the union an opportunity to appreciate the motives of the judges. This has been done: it now remains for the legislature to endeavor to prevent a recurrence of the violence, and to indemnify the militia for their privations and sufferings under a criminal prosecution and imprisonment.

The alternative of resistance by the physical force of the people, even to the unauthorised acts of any part of the United States' government, cannot be more repugnant to the wishes of the citizens of any state, than to that of Pennsylvania; nor can more poignant regret be felt by any of them that such an alternative has been necessary. An experience of its painfulness enables them truly to appreciate the value of a provision in the constitution which would secure the peaceable adjustment of disputes between the authorities of the union and the states; for the principle of federation is a principle of peace. If the miseries which have too long been entailed on human societies from the want of a peaceable method of adjusting national disputes, has induced the United States to confederate to prevent their occurrence in this happy country, while that system is (as was said by the late president) in the full tide of successful experiment, it must be particularly unfortunate if the monitions of experience should be disregarded, or suffered to pass without a prompt and faithful application of the light they may afford to the perfection of the system.

Without further adverting to the proceedings in the circuit court in the trial of the militia who opposed the marshal, though they contain extraordinary and alarming features, and were in a spirit of exact accordance with the decree that had produced the conflict, your committee are firmly persuaded, that an expression of sentiment, approbatory of the respect and obedience which those citizens have shown for the rights and laws of the state, by the legislature would be proper. The compensation of soldiers is by no means an equivalent for the inconvenience a criminal prosecution and the incarceration within the walls of a prison must have produced. General Michael Bright and his men acted

under the sanction of legislative acts and with legislative approbation, when they with all other good citizens must have regreted the arrival of a crisis that made it necessary so to act; and where the justest apprehension of disastrous consequences both to themselves and country must have been felt.

Obedience is the first virtue of a soldier, and that virtue is heightened when obedience is more hazardous than to disobey.

They were called upon to support at every risk, the acts of our legislature, the decisions of our judges, and the solemn verdicts of our juries, and were eventually punished for so virtuous a discharge of their duty. They, therefore, in the opinion of your committee, have strong claims on the justice and gratitude of the commonwealth, for a consideration honorable and valuable.

The committee therefore submit to the senate the following resolutions:

Resolved, That a committee be appointed to draft a resolution instructing our senators, and requesting our representatives in congress, to use their influence to procure an amendment to the constitution of the United States, that shall provide a disinterested tribunal to determine disputes finally, that may arise between the general and state governments, or co-ordinate branches thereof.

Resolved, That a committee be appointed to bring in a bill providing that a donation tract of two hundred acres of land be allowed to general Michael Bright, and each of the citizens who were sentenced with him to fine and imprisonment by the circuit court of the United States, for the Pennsylvania district, for acting as militia under the orders of the governor, in consideration of their services and sufferings in the cases aforesaid.

TUESDAY, MARCH 13.

The Senate, in committee of the whole, on motion of Mr. Rahm, struck out the words "two hundred acres of donation land," and inserted in place thereof, *the sum of fifty dollars.*

WEDNESDAY, MARCH 14.

The Senate took up the report of the committee of the whole, and the *first* resolution being under consideration, a motion was made by Mr. Doty, seconded by Mr. Slaymaker, to postpone the further consideration thereof for the present; and, on the ques-

tion, "Will Senate agree to postpone as aforesaid?" the yeas and nays were required by Mr. Doty and Mr. Preston, and were as follow, viz.

Yeas—Messrs. Brady, Campbell, Doty, Erwin, Gress, Heston, Humphreys, Mayer, Palmer, Preston, Slaymaker, Lane, speaker—12.

Nays—Messrs. Blocher, Borrows, Gilliland, Hiester, Lacock, Laird, Lowry, M'Clure, Rahm, Rankin, Roberts, Smith, Stevenson, Udree, Weaver—15.

So it was determined in the negative.

On the final adoption of the resolution, the yeas and nays being required by Mr. Lacock and Mr. Preston, were as follow, viz.

Yeas—Messrs. Blocher, Burrows, Doty, Gilliland, Gress, Heister, Lacock, Laird, Lowry, M'Clure, Rahm, Rankin, Roberts, Smith, Stevenson, Udree, Weaver, Lane, speaker—18.

Nays—Messrs. Brady, Campbell, Erwin, Heston, Humphreys, Mayer, Palmer, Preston, Slaymaker—9.

The first resolution was therefore agreed to.

The second resolution being under consideration, viz. that of granting "general Michael Bright, and each of the citizens sentenced with him, &c. the sum of *fifty* dollars;"

A motion was made by Mr. Doty and Mr. Binder to amend the same, by striking therefrom the word "fifty," and inserting in place thereof the word *twenty*.

Thereupon, a division of the question was called for by Mr. Roberts, to end with *striking therefrom*, and on the question—Will Senate agree to strike out?—it was determined in the negative.

The question again recurring on the resolution,

Mr. Palmer (of Luzerne) said: Mr. Speaker, before the question is taken upon this resolution, I must take the liberty of making a few remarks; not, however, with a view of making proselytes; for I presume the opinion of every gentleman is formed upon this subject; but by way of justification of the vote I shall give. In doing this, sir, I shall not attempt any historical relation of the facts involved in the long litigated case of Gideon Olmstead, from its origin, but shall confine myself to a few general observations as to the policy and consequences of the measures pursued by the legislature. As I had the honor of being a member of the committee appointed on that part of the governor's message relating to the case of Gideon Olmstead, before I proceed farther, I feel it to be my duty thus publicly to declare that I am not entitled to any share of the honor which this report may confer. Whatever merit or demerit may attach in consequence of this report, I leave to the full and ex-

clusive enjoyment of other members of that committee; they are welcome to all the laurels it can gain for them; I cheerfully yield to them all my right and title, and wash my hands of any participation or agency, in bringing into public view a production of a character so novel and extraordinary.

As to the first resolution, recommending an amendment to the constitution of the United States, I have very little to say. I have given my vote against it; not, however, from any particular objections I had to the principles it contained, but because I considered it unnecessary and premature to pass it—inasmuch as a resolution containing the same principle was passed at the last session of the legislature, in reply to which we shall doubtless receive communications from the legislatures of all our sister states.

But, sir, the resolution now offered for our approbation is vastly more exceptionable: it assumes another complexion—it presents quite a different character—it involves a principle infinitely important to society, and which I hope and trust will not be adopted by this house, without the most serious and deliberate reflection.

The measures which have given rise to the resolution, which we are now about to approve or reject, must be fresh in the mind of every member of this house. They have been the cause of much solicitude; they have received much censure and much praise; who has been in the right, or who has been in the wrong, must ultimately be decided by the voice of the people—which generally speaks the language of truth, and decides with propriety and correctness. As to myself, however, I have never entertained but one opinion as to the measures pursued by the legislature of Pennsylvania relating to the case of Gideon Olmstead; and that is, that every step which has been taken from beginning to end, has been radically wrong, impolitic, unjust and unconstitutional. I view them as measures which have a direct tendency to sap the very foundation of our constitution and government, as subversive of the liberties of the country, and an outrage upon common prudence. And had these measures been carried into operation and effect, according to the projected plan, the United States, in all human probability, would at this moment have been involved in a civil war, more bloody and cruel than ever disgraced the annals of a French revolution.

The main pillars which support the only free government on earth, would, at one stroke, have been cut asunder, and the fair fabric, which has justly been the pride and boast of man, would have tumbled into ruin. Havock, desolation and death, would have spread their baneful effects through the country; our

fields would have been covered with the bodies of the dead, and the earth crimsoned with the blood of our own citizens. In this situation, horrid indeed must be the condition of our country. It would present a spectacle of wretchedness and ruin, of which we can more easily conceive than describe. Well might I exclaim in the language of the poet,

"Had I an hundred mouths, an hundred tongues,
A voice of brass, and adamantine lungs,
Not half the mighty scenes would I disclose,
Repeat their crimes, or count their dreadful woes."

But, thank God, we have providentially escaped this fatal catastrophe; and I sincerely hope it may teach us a lesson of prudence, that will prevent us from ever again engaging in such a career of infatuation, madness and folly.

It is said, sir, that general Michael Bright, and a few brave, meritorious citizens under his command, have been arrested, tried, convicted and imprisoned, for no other offence than that of resisting the marshal of the United States in the execution of process issued out of the supreme court thereof. And this sentence of the court, is modestly declared to be unjust, unconstitutional, tyrannical and oppressive. I have always understood until very lately, that it was indispensibly necessary to the existence of our government, that her laws should be duly executed. I havealso understood, that the constitution and laws of the United States were paramount to all other laws; that they were the supreme law of the land, and compared to laws of inferior authority, were as the voice of Omnipotence to the feeble utterance of man. But I have now to learn, for the first time, that so far from being an offence to oppose the execution of the laws of the United States, it is to be considered a meritorious act; and all who have the honor of being concerned, are to receive a pecuniary compensation therefor. Motives of sympathy and compassion for the privations and sufferings of general Bright and his men while incarcerated within the walls of a prison, are the ostensible reasons held up to view in justification of the contemplated appropriation; but the real object of this resolution is, to justify the unwarrantable and unprecedented measures recently pursued by the legislature. And when I make this declaration, sir, I hope it will not be understood to be a mere conjecture of mine; I have never had any doubt to be sure, as to the real object of this measure, but I might have felt a delicacy in making this positive declaration, had I not the most conclusive and incontestible evidence of the truth of my assertion. It will be recollected, sir, that, when this subject was under discussion in committee of the whole yesterday, it was declared by one gentleman who was extremely anxious for the success of this reso-

lution, that the object to be effected by it was a justification of the measures pursued by the legislative and executive branches of our government. After this declaration, I presume no gentleman can rationally doubt as to the real object and intent of the resolution, whatever the ostensible reasons may be.

We are solemnly called upon to remunerate general Bright and his men—and for what? for opposing with a military force an officer of the United States in the execution of his office. But, say gentlemen, this opposition was legal, just and proper; inasmuch as it was made under the authority of an existing law of this commonwealth.

And do gentlemen really believe that the legislature of Pennsylvania, in the plentitude of their power, can legalize treason against the government of the United States? If they do, I must beg leave to disagree with them; I do not believe it. Whatever might have been the intention of the law of 1803, there is nothing expressed in it which would justify the measures which have been adopted and pursued under the authority of that law; the arguments, therefore, in favor of the measures pursued must have been drawn from a very nice construction of that law: from implication; and not from any positive expression. But even if the law itself had positively expressed that a military force should be called out, I contend it could have had no binding force or authority, inasmuch as it would have been unconstitutional, and therefore absolutely void.

But, sir, permit me for a moment to meet gentlemen upon their own ground. Suppose, for argument's sake, that the resistance was legal, constitutional and proper; that the just rights of the state were actually invaded; that the independence and sovereignty of the commonwealth was attacked; are those men entitled to remuneration upon that ground? I contend not, sir. What duty had they to perform? The answer is, it was their duty to protect the executrices of the late David Rittenhouse from arrest by the marshal of the United States. They had no other business on hand; their duty was pointed out to them. Upon this principle, if they have done their duty; if they have successfully resisted the marshal in his attempts to execute his process; if they have protected the ladies from arrest; if they have supported the just rights of the state against the wanton and outrageous attacks of its enemies; they are certainly entitled to, and ought to receive, an edequate compensation for their services. But, sir, have they done this? The answer of every man must be in the negative. No, sir, they have neglected their duty; they have not performed the service required; they have been sleepy, careless, indolent, inattentive centinels; they were not found at their posts; they have basely surrendered the

fort; they have given up the prize; they have suffered the just rights of the state to be trampled under foot. But, sir, had they faithfully performed their duty, the independence and sovereignty of the state would have been preserved; her honor would have been saved, and her 14,000 dollars might at this moment have been safe in your treasury. Poor Pennsylvania! if she has no better guardians of her rights than those men, she must be in a pitiful condition indeed.

But, sir, there certainly must be something wrong in this business; there has either been too much done or too little. If, as I contend, the opposition was unauthorised and unwarrantable, surely too much has been done; if, on the other hand, the measure was constitutional, just and proper, too little has been done; for it will be recollected, as we go along, that if the war measures were justifiable at all, they were justifiable to any extent; if opposition to the marshal, before he made the arrest, was proper, it would have been equally proper after he had made the arrest, to have pursued him and to have rescued the prisoner at all hazards. This was not done. No, sir, the fact is, as I believe, that all who were concerned in this disgraceful transaction, became alarmed and terrified at the course they were pursuing. They were panic struck, sir, they found themselves involved in inextricable difficulties, from which they had no way to make an escape, but to back out; they did back out; and in doing this, according to the arguments of gentlemen, the just rights of the state have been prostrated; and for this prostration of the rights, sovereignty and independence of the state, general Bright, and his little band of patriots, are to be remunerated. Suppose, sir, we could make a retrograde march upon time; suppose we could undo every thing we have done under the pretended authority of the law of 1803; I would ask gentlemen, whether they could lay their hands upon their hearts and say they would pursue a course similar to that which has been pursued? Would they like to see another such farce acted? if so, I presume they are prepared to vote for this resolution.

There is another circumstance, sir, connected with this subject, on which it becomes my duty to make a few observations. It has been held up to the view of the public, that the law of 1803, and the measures which have been pursued under the authority of that law, were the fruits of democracy. Whether this bugbear has been held up to view, with a design to intimidate, and thereby preserve due subordination in the democratic ranks; or whether the actors in the disgraceful scenes which have passed, were really induced to believe that they were exclusively the patriots of Pennsylvania, I am not able to determine; but one thing I do know, and that is, that I shall never prostrate

my mind and my conscience to the vile purpose of gratifying the pride or ambition of any man, or any set of men. It is true, that I feel a pride and pleasure whenever I find my own opinion accords with the opinions of those with whom I have been in the habit of thinking and acting on political subjects. For the correct and genuine principles of rational democracy I ever have been, and trust I ever shall be the zealous, though feeble, advocate—firmly believing it to be that form of civil government which is most eminently calculated to promote the prosperity and happiness of an enlightened and virtuous people. But if we intend to get safe into port with our democratic ship, it will become necessary for us to exercise more skill, more judgment, and more prudence than we have in the management of the sloop Active. The history of the rise and fall of political parties will by and by be understood. A party may obtain power by a variety of means; but there is but one mode by which any party can long retain it in this country; and that is, by a judicious and prudent exercise of it. We ought to recollect that it was the unjust and unwarrantable exercise of power which caused the downfall of that political party which immediately preceded the present prevailing party in Pennsylvania; and if we follow their footsteps, it requires not the aid of inspiration to fortell that we shall share the same fate; we shall be hurried down the stream of oblivion, and ingulphed in the same vortex which swallowed up our political enemies. If, sir, the measures which have been pursued under the authority of the act of 1803, can be called the fruits of democracy, it must be such a kind of democracy as I can never subscribe to. It is a democracy, which breathes forth the spirit of discord and disunion. It is a democracy, which would prostrate all law and all government. It is a democracy, which would even embroil the angels in Heaven and dethrone any authority short of Omnipotent power. From the fatal and ruinous effects of such a democracy, may God in his mercy preserve us.

In whatever point of view this question may be considered by others, I am contrained to view it as a broad question, involving a great principle, infinitely important to the existence of the government under which we live; and if we pursue the course we have begun, it must utlimately involve us in anarchy and confusion; from which the transition is natural and easy to tyranny and despotism. Despotism, sir, in whatever shape it may appear, in whatever garb it may be drest, is but despotism still; and it is immaterial to the interest, to the welfare, and to the happiness of man, whether it appear in the modest attire of democracy, or in the more bold and daring attitude of federalism;

the principle is the same, the consequences are the same: slavery and misery must be the lot of man.

Let us then assume the dignity of our own characters, let us burst the bands of prejudice which encircle us, break the chains which are attempted to be rivetted upon us; let us rise indignant at the offered insult, and act worthy of the name of freemen.

I tremble, sir, for the fate of democracy, when I behold such infatuation and madness seize the minds of men professing to be her main supporters. I shudder for the liberties of the country, when I see men professing to be the exclusive friends of liberty, pursuing measures which in my mind directly tend to the subversion of freedom, with a zeal which seems to bid defiance to resistance.

But, sir, I forbear to dwell further on a theme so unpleasant and so grating to the feelings of every man of sensibility; let us turn from the unpleasant task of recapitulating the evils which result from the follies and errors of man: and let us fondly hope that the time may yet come, when party prejudice and party animosity, shall be consigned to the dark abodes of oblivion; when reason shall be the guide of human action, when justice shall illumine the paths, and shine conspicuously in all the acts and proceedings of those who are entrusted with the all-important concerns of the people; in short, when the whole energies of man shall be directed to promote the peace, prosperity and happiness of his fellows.

Mr. Roberts (from Montgomery). Mr. Speaker, the subject under consideration is so familiar to the members of this body, that it is with the utmost reluctance I ask any further attention. The question before us is, whether general Bright and the militia, who were convicted and imprisoned before, and by the circuit court of the United States, shall be compensated for the inconveniences and loss of time they sustained thereby? Observations confined strictly to that question, will not require many words; but the gentleman from Luzerne (Mr. Palmer), having spoken generally to the policy and consequences of the legislative measures heretofore had, in relation to this question, a brief reply becomes necessary. The gentleman views the proceedings of the state from the beginning, in every step radically wrong, subversive of the best principles of our government, and as sapping the foundations of our liberty. The controversy respecting the prize sloop Active began in 1778, at the very crisis of American danger. The old congress and the state authorities disagreed on a question of jurisdiction. That the men who administered the government of the state, at that time, were not actuated by the best whig principles; that their bosoms were not warmed with the purest love of their country; that

they felt not the sincerest attachment to American independence and freedom ; or that they wanted talents, information or moral integrity, has never even been hinted. A higher character need not be given to the congress of '78, and I sincerely acknowlege it their due. On a question that divided the wisest and best of men in opinion from the beginning, a hasty decision is not likely to be the most correct. To determine whether congress or the state was in error is certainly important; but as the gentleman has confined himself to general observations, I will not tax the patience of the senate to listen to a minute investigation of the subject. Were I to do it, it might be shown that neither congress nor their committee had any jurisdiction in the case they undertook to decide on. That their resolves were fully complied with by the state, that under them their committee had no authority to open or reverse the verdict of a jury. That the eventual relinquishment of the contest by congress is proof, they doubted the jurisdiction of their committee, if it is not an acknowlegment of their error. That the federal courts could not take cognizance of the case, because the state was a party ; and because they have no retrospective authority.

If these positions be just, and I trust they are, the decree of the United States' courts was utterly subversive both of the federal and state constitutions. The former guarantees to each state, a republican form of government, and forbids their suability in the federal courts ; while the latter declares no money shall be drawn from the treasury, except in consequence of appropriations made by law. Under the circumstances which the state was placed, it became a question of the utmost importance to determine, what course she ought to pursue. Was she to behold the fair fabric of the federation disobeyed, without even opposing her negative ? Was she submissively to yield her reserved sovereignty to the mandate of the judges, or assert her rights and suffer wrong only in the last resort ? The legislature of 1803, chose the latter alternative, apprehending more danger to the peace and happiness of the people of the United States, by yielding piecemeal the rights of the states, than in resisting the earliest efforts at encroachments. The supreme court in 1809, determined to put this matter to issue ; at this act of the judges, the gentleman from Luzerne feels no alarm ; in his eyes the error is all on the side of the commonwealth. If her measures had been carried into effect, says he, our country might have been involved at this moment, in wars more bloody than those that disgraced revolutionary France. The gentleman surely does not recur to the measures of the state; if he did, he would find them characterised by a love of peace, and marked with moderation and forbearance, under the keenest injury.

Our escape from those sanguinary scenes that disturbs his imagination so much, is not due to the prudence nor forbearance of the judges, at any rate. To preserve peace and liberty the U. States confederated, the first by establishing a government for general concerns, to reconcile the jealousies and jarring interests of the states; the last by retaining the residue of sovereignty to them, that power might be so divided as not to become dangerous in a few hands. It is a principle as valuable, that the rights of the states should be preserved inviolate, as that the general government should be obeyed and supported within the limits of a constitutional exercise of power.

Had the consequences, the gentleman so eloquently describes, arisen, it would have been due to the measures of the judges, and not of the state; with a perfect acquaintance with the history of the case, with the law of 1803 before them, they decide (after giving an opinion wherein it is hard to determine whether want of temper or want of candor is most conspicuous), that a peremptory mandamus must be awarded. The effect was, that the state must give up to the judges, what she refused to yield to the old congress; she must disregard or repeal her own law; she must have sacrificed a sacred constitutional right, or she must have resisted the decrees.

I am disposed to view even the mildest features of a civil war, with as much horror as the gentleman, and am ready to make as great sacrifices to avoid it; but a firm persuasion on my part, that the best security against its tremendous evils, is an early and firm resistance by the states, against federal encroachment on their rights, is perhaps the cause of our difference in opinion.

The pillars of the only free government on earth, which we have been told of, are the states; and if we permit them to be cut down by one stroke or many, by the judges and their posse, or the commander in chief with his legions, the pride and boast of man will alike be tumbled into ruin. It is difficult in listening to the rhapsody of the gentleman, to recognize the officer of the state. The judges being bound by oath, only to support the constitution of the U. States, may apologise for their forgetting there is a state constitution; but when it is forgotten by the members of the senate, it cannot be from this cause.

The effects of the state measures, had they had full operation, have been most fearfully painted. Let us examine them and see if they merit it: the governor in giving his orders to general Bright, expressly requires him not to injure any person attempting to serve the process, unless compelled by the most imperious necessity. Surely a stronger evidence of a wish on the part of the executive to avoid conflict, could not be asked. The legislature, agreeably to the 4th section of the 4th article of the

constitution of the U. States, applied to congress, through the executive, in the most respectful manner, for a fufilment of the plighted guarantee of the U. States, "*to protect the state against domestic violence.*" The state, to demonstrate her pacific temper, placed the money in the hands of the governor, to be applied as congress might direct. The gentleman says these measures are still fresh in our memories; if so, he must view them in an inverted position, or he could never have conjured out of them any likeness to the bloody scenes of revolutionary France. The temper of the state has been preserved, and her attachment to the union evinced, in every step she has taken under the most aggravated wrong.

Were I to indulge in denunciation against the judges, as the gentleman has against the state, I should be justified by the evidence they have given of evil intention, and sustained by fact; but my cause needs not such subterfuges.

We have been told, the measures of the state have been the cause of much censure and much praise; but the people must ultimately, and will correctly, decide. To enable them to do it their passions need not be excited, and respect for their representatives restrains me from using any other language to them than that of reason.

I join the gentleman in thanks to an all-saving Providence for our escape from the perils in which judicial usurpation had involved us; yet I hope whenever a like attempt shall be made to subvert the rights of Pennsylvania, her citizens may not want virtue to resist it.

The gentleman tells us, the constitution and laws of the U. States are paramount, and the existence of our government requires the laws should be executed. The constitution and laws of the states are equally obligatory: certain portions of sovereignty are allowed to each government; in the legitimate exercise of these powers each of them are paramount, but neither has general supremacy. This doctrine of federal supremacy is an admission at once of consolidation; the constitution and laws of the state are blotted out, and we are left at the mercy of the federal judges, whose decrees are blindly to be enforced by the obsequious arm of the executive. Between governments it is impossible that misunderstandings should not arise at some time; in the federal system no means are provided to adjust them. In the case before us, the state, to lessen the chances of disaster to the public peace, obligated herself to abide by the decision of congress; but the judges seemed to press the execution of their decree with more violence when the state evinced such moderation. Were they fearful of the decision congress

might have made? or was it that they apprehended an investigation could have proved them something less than the supreme judicial tribunal of the nation? A civil war seemed to weigh light in the scale against the gratification they felt in carrying their measures.

I hope and trust, whatever difference of opinion we may feel on this occasion, the gentleman from Luzerne is the only member of this body who is prepared to bow to what he styles the omnipotence of the U. States government. However honest may be his intentions (I give him the fullest credit for his honesty), it seems he has yet to learn the nature of our government. No one but himself would say we think it meritorious to oppose the laws of the U. States; or that those concerned in the opposition to them are entitled to pecuniary reward. Not a disloyal expression has escaped any department of the state government against any legitimate authority of the U. States. The resistance has uniformly been against a violation of the constitution and laws. The government of the state is a component part of the federal policy; equally sacred with any other part, and equally entitled to judge of its own rights and its own jurisdiction, and to defend them when they are invaded.

We are accused of pleading compassion to justify this measure, and of having declared it was to support the legislature and executive. This charge I must deny; the resolution is supported as a measure of mere justice, as a fair *quid pro quo* for the loss of time and inconveniences consequent on a criminal prosecution and imprisonment. I hope I am as susceptible of compassion as the gentleman; but I hope never to indulge it when voting money out of the public treasury.

While the first resolution was under consideration, it was said, it was due to ourselves that we should reiterate our call for an amendment of the federal constitution, which we believed necessary to the peace of the federation; but not a word was said about the *executive*. Why does the gentleman travel out of his road to abuse that officer? His conduct is not the subject of investigation; whether or not the governor has acted correctly the people will (as he has said) decide. I hold as little connection with the executive as the gentleman from Luzerne. I never received directly, nor indirectly, a favor from any executive; yet I am ready to do the governor justice in the case of Olmstead, as it is called. I think he acted prudently, and in exact obedience to law, which he had no power to dispense with.

We are triumphantly asked, can Pennsylvania legalise treason? The usurpation of the judges left her no alternative but to legalise it, or to resist their decree.

To what has been said on the act of 1803, I answer: the man who will put a different construction on it, from that put upon it by the governor, must either possess great ingenuity, or great perverseness of temper. Could the legislature, when they declared the decree void, and that it ought not to be obeyed, have designed it should not be resisted. A different conclusion must be palpably absurd.

The question is put, did the men do their duty? I say effectually opposed the serving of the process at least; for this act they are fined and imprisoned. The general and his men are charged with backing out of difficulty, and prostrating the rights of the state. If the charge was correct (but it is not admitted), and the calamities the gentleman from Luzerne has so eloquently pourtrayed, were thereby averted, "the little band of patriots" ought to receive his thanks, not incur the lash of his ridicule. The documents contain abundant evidence that every reasonable exertion was made to the last to resist the serving of the writ.

The gentleman speaks of subordination in the ranks, and exclusive patriotism, doubtless to enhance his own virtue and independence; were he less disposed to criminate others, he would not have so much necessity to proclaim his own purity and incorruptibility; while he will not prostitute his mind to gratify any man's pride, the judges must be satiated with the praise of their decree, and his condemnation of the measures of the state.

An apprehension seems to be entertained, that we are about to renew the war by this resolution; nothing can be further from the fact. Whether the resistance was right or wrong no blame can attach to the militia. They acted in obedience to the laws and authorities of the state; and by so acting, suffered. A principle of justice requires they should be remunerated; and I hope this resolution will be adopted from this motive alone.

Mr. Binder (from Philadelphia). Mr. Speaker, the gentleman from Montgomery says, those persons have suffered. I contend they did not; for they were as well provided for as they possibly could be, and unless the gentleman considers *feasting* suffering, the argument will not apply to those persons; for I am well informed, that some of them were as well off as ever, and their confinement was nothing more, for the few days they were in prison, than a *frolic*. Therefore, I hope, sir, the resolution will not be agreed to.

Now, Mr. Speaker, we see the drift of the gentleman very well. He states that this donation land, by taking the chance of the wheel, may, in all probability be not worth more than 25 cents per acre. This appears, sir, that if we give them the land, and as it is not worth more than 25 cents per acre, then,

sir, the 200 acres will, by the calculation made by the gentleman, amount to fifty dollars. We will, therefore, take the land back and give them the money; it may be of more service. This is logic to be sure.

But we are not in the habit of giving the old veterans of our revolution more than that quantity, and they have spent the prime of their life in establishing our independence, and I am sorry to say they are too often neglected; but those persons we are now going to pay, it seems have served *to the end of the war*, and they must be better provided for than our old veterans. I trust, sir, that we shall not agree to fill the blank with any such sum; but that we will pay them what the militia law of our state allows, when in actual service, and no more; and I shall have no objections to allowing them pay, until they were liberated from their confinement.

The question was now taken on the resolution, the yeas and nays being required by Mr. Roberts and Mr. Wilson. They are as follow:

Yeas—Messrs. Blocher, Borrows, Gilliland, Hiester, Lacock, Laird, Lowry, M'Clure, Rahm, Rankin, Roberts, Smith, Stevenson, Udree, Weaver, Wilson—16.

Nays—Messrs. Binder, Brady, Campbell, Connelly, Doty, Erwin, Gress, Heston, Humphreys, Mayer, Palmer, Preston, Slaymaker, Lane, speaker—14.

So it was determined in the affirmative, and

Ordered, that Mr. Roberts, Mr. Lacock and Mr. Weaver, be a committee for the purpose expressed in the said resolution.

In conformity to which, the said committee, on the following morning, reported a bill in the following words:

An act for the relief of certain persons therein mentioned.

Sect. 1. *Be it enacted by the senate and house of representatives of the commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That the sum of fifty dollars, each, be paid to Michael Bright, William Cole, Charles Westfall, Daniel Phile, James Atkinson, Charles Hong, John Knipe, Abraham Ogden, and Samuel Wilkins, or their order, out of the funds heretofore appropriated for the support of government, in full for their loss of time while in prison, and expenses paid in opposing a prosecution issued against them out of the district court of the United States, in consequence of their obedience, as militia, to the orders of the governor, issued under the act entitled "an act relating to the claim of this commonwealth against Elizabeth Sergeant and Esther Waters, surviving executrices of David Rittenhouse deceased," passed, April 2, 1803, for the protection of the just rights of the state, and the persons and properties of the executrices, from any pro-

cess whatever to be issued out of any federal court, by any means or measures that he might deem necessary for the purpose.

SAME DAY, IN THE AFTERNOON.

On motion of Mr. Roberts and Mr. Lacock, the Senate proceeded to the consideration of the aforesaid bill.

A motion was made by Mr. Binder and Mr. Humphreys, to amend the same by striking therefrom these words: "the sum of fifty dollars each be paid," and inserting in lieu thereof the following: "each and every person herein named shall be paid as militia men, actually engaged in the service, the amount of pay agreeably to the original account now on file in the auditor-general's office, as rendered by the commanding officer, general Michael Bright."

And, on the question, will Senate agree to amend as aforesaid? The yeas and nays were required by Mr. Binder and Mr. Humphreys, and are as follow, viz.

Yeas—Messrs. Binder, Brady, Doty, Gress, Heston, Humphreys, Preston, Slaymaker, Lane, speaker—9.

Nays—Messrs. Blocher, Burrows, Erwin, Gilliland, Hiester, Lacock, Laird, Lowrey, Mayer, M'Clure, Rankin, Roberts, Smith, Stevenson, Udree, Weaver—16.

So it was determined in the negative.

A motion was then made by Mr. Brady and Mr. Binder, to amend the same by inserting, before the name "Michael Bright," the word "general," which was disagreed to.

And, on the question, will Senate agree to the section?

The yeas and nays were required by Mr. Erwin and Mr. Lacock, and are as follow, viz.

Yeas—Messrs. Blocher, Burrows, Gilliland, Hiester, Lacock, Laird, Lowrey, M'Clure, Rankin, Roberts, Smith, Stevenson, Udree, Weaver—14

Nays—Messrs. Binder, Brady, Doty, Erwin, Gress, Heston, Humphreys, Mayer, Preston, Slaymaker, Lane, speaker—11.

So it was determined in the affirmative.

The title being under consideration, a motion was made by Mr. Binder and Mr. Humphreys, to amend the same by striking therefrom the word "persons," and inserting in lieu thereof these words, "old soldiers during the late war."

On adopting said amendment, the yeas and nays were required by Mr. Lacock and Mr. Humphreys, and are as follow, viz.

Yeas—Messrs. Binder, Brady, Humphreys—3.

Nays—Messrs. Blocher, Burrows, Doty, Erwin, Gilliland, Gress, Heston, Hiester, Lacock, Laird, Lowrey, Mayer, M'Clure, Preston, Rankin, Roberts, Slaymaker, Smith, Stevenson, Udree, Weaver, Lane, speaker—22.

The question was determined in the negative: and the title agreed to.

FRIDAY, MARCH 16.

The bill entitled "an act for the relief of certain persons therein mentioned" (Michael Bright and others) was read a third time, and on the question "shall this bill pass?" The yeas and nays were required by Mr. Heston and Mr. Binder, and are as follow:

Yeas—Messrs. Blocher, Burrows, Gilliland, Hiester, Lacock, Laird, Lowrey, M'Clure, Rahm, Rankin, Roberts, Smith, Stevenson, Udree, Weaver—15.

Nays—Messrs. Binder, Brady, Doty, Erwin, Gress, Heston, Humphreys, Mayer, Preston, Slaymaker, Lane, speaker—11.

Whereupon, ordered, that said bill be presented to the house of representatives for concurrence.

The bill was accordingly presented to the house of representatives on the same day.

It was never called up nor acted on.

And so ended the proceedings of the legislature of Pennsylvania, in the case of Gideon Olmstead, for the session of 1809-10.

DOCUMENTS

IN THE CASE OF GIDEON OLMSTEAD.

IN SENATE.

SATURDAY, DECEMBER 16, 1809.

The secretary of the commonwealth being introduced, presented a message from the governor, together with the documents therein refered to, which were read as follow, viz.

To the senate and house of representatives of the commonwealth of Pennsylvania.

FELLOW CITIZENS,

For the further information of the members of the legislature, I herewith transmit copies of all the documents, relative to the case of Gideon Olmstead and others, *vs.* the executrices of David Rittenhouse, esquire, deceased; except such as already appear on their journal.

SIMON SNYDER.

Lancaster, December 16, 1809.

Philadelphia, February 24th, 1809.

SIR—I have the honor to enclose a copy of a note I have received to-day from Mr. Ingersoll, who has just returned from Washington. You will perceive, that it relates to the case which is the subject of the act of the 2d April, 1803, and which is now brought to a point, where the interposition of the state becomes necessary "to protect the persons and property of Elizabeth Sergeant and Esther Waters from the process of a federal court." On their behalf, and by their request, I make this communication; confident that your excellency will take the proper steps to carry into effect the provisions of the act, and secure them from the danger, to which they are exposed by obeying its "requisitions."

With great respect, I have the honor to be, your excellency's humble servant,

JOHN SERGEANT.

The governor of Pennsylvania.

(COPY.)

DEAR SIR—The supreme court has ordered, that a peremptory mandamus issue in the suit of Gideon Olmstead and others *vs.* Mrs. Seargeant and Mrs. Waters, executrices of Mr. Rittenhouse.

I presume immediate application will be made to judge Peters for an execution against the persons and effects of Mrs. Sergeant and Mrs. Waters, or rather, as it is an admiralty proceeding, an attachment against their persons will be the compulsory process adopted on the occasion. I saw the plaintiff at the court in Washington, on Monday last, and he may be expected to arrive here this day with the mandate from the supreme court.

The business is now brought to a crisis. The state is bound not only to indemnify, but to interpose between the defendants, and the execution or attachment: immediate notice should be given to the governor. As the legislature is now in session, no time ought to be lost in taking measures to preserve the faith of the state, upon the pledge of which, the property in question was delivered to the governor.

Sincerely your's,

JARED INGERSOLL.

1809, February 24th.

John Sergeant, Esq.

Philadelphia, March 24th, 1809.

SIR—On my arrival in the city, I discovered a writ would issue against Mrs. Sergeant and Mrs. Waters, this day (which has issued) in consequence of which it became my duty to call into service a part of the legion for their protection; consisting of two non-commissioned officers and twelve privates—which of course will be relieved daily, until further orders from the executive. As no provision has been made, by law, for providing for those troops, it would be necessary you point out some mode, by which I may proceed for their support. For further particulars I refer you to the bearer, Mr. Walter Franklin, requesting your answer on the subject as speedy as possible.

I have the honor to be, with the greatest respect, your obedient humble servant,

MICHL. BRIGHT, brigadier general.

Nathaniel B. Boileau, Esq.

Secretary of the commonwealth.

Philadelphia, March 25th, 1809.

DEAR SIR—When I wrote to you last evening, I had no idea the marshal would have attempted to execute his writ; but this day he came with his officers in due form, which was resisted by

the guard, at the point of the bayonet. This subject has created much alarm in this city; owing to misinformation. There has been much interest made here by a *particular sect*, to prejudice the mind of the people against the measure. I am sorry to say, that it has too much prevailed. There has, in consequence thereof, several companies absolutely refused to serve their tour of duty; a due return of which you will receive. In fact, it has been with the utmost difficulty I could get men to serve; knowing, as you well must, the unprepared state of our militia. I have issued my orders this day to colonel John Steele, for the purpose of enforcing your orders; but have my doubts whether he will be able to command a competent force to answer our purpose: our situation is delicate. The marshal has noted our men, with a determination to have them indicted for high treason, as well as myself. Where the business will end, I know not; but, disagreeable as the service is to me, I shall at all times be ready to execute any orders, which I may receive on this subject, relying on the support of the executive of this state.

I have the honor to be, with great respect, your obedient servant,

MICHL. BRIGHT, brigadier general.

Nathaniel B. Boileau, Esq.

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Secretary's office, March 29, 1809.

Sir—The governor directs me to express to you his full and high approbation of your conduct, and the great satisfaction he feels in having appointed a man, who has so ably executed the orders which he has given, and that he relies with confidence on your future exertions to support the rights of the state to the utmost of your power, under circumstances so unpleasant and embarrassing. I am further instructed to assure you, and those under your command, that nothing in his power shall be wanting to remunerate you and them, for your services, and a complete indemnification for all expenses which may occur. By his order, I enclose you a check for one thousand dollars on account, to defray the expenses of the guards that you have employed, and that further remittances will be made, as exigencies may require. He conceives, that the original orders you have received, are sufficient to justify you in taking any measures you may conceive necessary and expedient to protect the ladies from arrest, until he receives an answer from the president of the United States, which is hourly expected.

I am, sir, with respect, your obedient servant,

N. B. BOILEAU, secretary.

General Michael Bright.

Philadelphia, March 31*st*, 1809.

SIR—Your's of the 29th instant came safe to hand, by which I am happy to find the governor is pleased with my conduct in the execution of his orders, committed to me for the purpose of protecting the persons and property of Elizabeth Sergeant and Esther Waters. But, the subject has caused much sensation in this city, owing to a certain class of people, who are endeavoring to draw the citizens from the cause. In my last, I informed you of several companies of the legion having actually refused to obey my orders; in consequence of which, it is with difficulty we can get a sufficient number of troops to relieve; owing to many of the members of the legion being naturalized citizens, who are led to believe that the oath by them taken, was to support the constitution of the United States, and not that of the state of Pennsylvania. A list of whose names will be forwarded in due time, for the information of the governor.

I have just learned from good authority, that the marshal is serving summonses on the citizens of this state, for the purpose of raising a *posse* to assist him in the execution of the duties of his office, and that it is his determination to make another attempt, but we shall be on the alert to resist him. If unpleasant circumstances occur, it will rest with him.

Mrs. Sergeant and Mrs. Waters have become tired of their confinement, and have expressed, that they will not bear it any longer, let the consequence be what it may.

Should any thing new occur, I shall immediately inform you of it; and believe me ever ready to execute the orders of the governor.

I am, with respect, your obedient humble servant,

MICHAEL BRIGHT.

Nathaniel B. Boileau, Esq.

—

Philadelphia, April 5, 1809.

SIR—The daughters and representatives of Mr. Rittenhouse have, with respectful, but anxious silence, attended to the proceedings of the executive and legislative departments of the government of Pennsylvania, in the hopes of a result, that would effectually afford the promised indemnity and protection, for their compliance with the terms of the act of 1803. Till this day, they have seen nothing but measures which made them prisoners in their own houses, under a military guard; which have excited (though surely without design) disorder and tumult in their neighborhood; and which have exposed them to personal mortifications, more severe than any thing that a second payment of the sum in dispute, or a submission to the process of the marshal could have inflicted. It was their sense of the legisla-

tive engagement, when they complied with the terms of the act of 1803, that whatever conflict might arise on the question of right, between the state and the union, they should be indemnified, as a point of honor, from every pecuniary responsibility or personal suffering.

Under the impression of these sentiments, it is some consolation for the family of Mr. Rittenhouse, at last to see, that a provision has been made by the legislature, which authorises you, sir, " to carry into effect all and every engagement of the commonwealth touching the premises, in such manner as may appear to you to be advisable, just and proper." It is an engagement of the commonwealth, that the representatives of Mr. Rittenhouse and their property shall be protected; or, in other words, that they shall be indemnified, for a compliance with the act of 1803. And it is now submitted, at their request, to your candor, whether it can be deemed advisable, just and proper, nay possible, to carry into effect that engagement, in a manner, which shall expose them to imprisonment, riot, affliction and alarm.

The daughters of Mr. Rittenhouse mean not to impair, nor to question the rights of the state, in making this representation; but they mean respectfully to assert their own right to a fair and perfect protection, in liberty and property, under the faith of the legislative promise. The state, they are confident, possesses other means to assert and maintain its own rights, than by making them the victims of the contest.

On behalf, therefore, of the representatives of Mr. Rittenhouse, permit me, sir, to entreat an early execution of the act of the general assembly, by carrying into effect the engagement of the commonwealth with them, in such manner as may appear to you to be adviseable, just and proper.

With great respect, I have the honor to be, your excellency's humble servant,

JOHN SERGEANT.

The governor of Pennsylvania.

Lancaster, April 7th, 1809.

TO THE PRESIDENT OF THE UNITED STATES.

SIR—In discharge of a legislative injunction, I transmit to you the proceedings of the general assembly, on the long litigated case of Gideon Olmstead and others *versus* Elizabeth Sergeant and Esther Waters, executrices of David Rittenhouse, deceased, late treasurer of Pennsylvania. Believing it will tend to a more perfect understanding of the subject, I take the liberty of enclosing a copy of an act of the general assembly relative thereto, and also beg leave to refer you to two other acts, passed February 1st, 1801, and 2d April, 1803.

While I deeply deplore the circumstance which has led to this correspondence, I am consoled with the pleasing idea that the chief magistracy of the union is confided to a man, who merits, and who possesses so great a portion of the esteem and confidence of a vast majority of the citizens of the United States; who is so intimately acquainted with the principles of the federal constitution; and who is no less disposed to protect the sovereignty and *independence of the several states*, as guaranteed to them, than to defend the rights and legitimate powers of the general government; who will justly discriminate between opposition to the constitution and laws of the United States, and that of resisting the decree of a judge, founded, as it is conceived, in an usurpation of power and jurisdiction, not delegated to him by either, and who is equally solicitous with myself, to preserve the union of the states, and to adjust the present unhappy collision of the two governments, in such a manner as will be equally honorable to them both.

Permit me to add, in addition to the act I have done, as chief magistrate of the state of Pennsylvania, to assure you, sir, as an individual, of my full confidence in the wisdom, justice and integrity of the present administration of the general government, and my fixed determination, in my public, as well as my private capacity, to support it in all constitutional measures it may adopt.

With the highest consideration, I am, sir, your obedient servant. SIMON SNYDER.

Secretary's office, April 7, 1809.

SIR—The governor has informed me, that he received a letter from you last evening, touching the case of Olmstead, and has instructed me to inform you, that although the law may appear to vest in him a discretionary power, he thinks, under existing circumstances, it would be premature in him at this time, to exercise that discretion in the manner you have hinted at in your letter. The case has been communicated to the president of the United States, which, he presumes, will be by him laid before congress, immediately on their meeting in May next: and no unforeseen difficulties having arisen in protecting the just rights of the state, since the adjournment of the legislature, he deems it inexpedient to take any other measures than those he has already adopted; of the incorrectness of which, he is not yet convinced. While he feels most sensibly for the situation, under which circumstances have placed the ladies, he is not insensible to the importance of the trust confided to him, as the chief executive of the state of Pennsylvania, in the defence of its sovereignty and independence.

The ladies may rest assured, the governor feels no disposition

to impose any restrictions or privations on them, save such as he is compelled to do, by a strong sense of duty.

I am, sir, your obedient servant,

N. B. BOILEAU, secretary.

John Sergeant, Esq.

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Lancaster, April 8, 1809.

SIR—I have just now had a conversation with the governor, and he has authorised me to direct you, that in case M. Bright, or any of his men are arrested, you should immediately apply to the chief justice for a habeas corpus to have him or them liberated; that you should also employ council to assist you, if you thought proper; also, that if the ladies were arrested, you should immediately make a similar application to the chief justice in their behalf. In the mean time, should your application fail, arrangements will be made to pay the money. If you should succeed, then it is hoped, that the *just rights of the state will still be preserved.*

I am, sir, with high respect and esteem, your obedient servant.

N. B. BOILEAU, secretary.

Walter Franklin, Esq.

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PENNSYLVANIA.

Lancaster, April 10, 1809.

SIR—I have it in charge to transmit to you the proceedings of the legislature of this state, in a special case, and a resolution involving a general principle of the deepest interest to the several states composing the union, in their local sovereign capacities, and proposing an amendment to the constitution of the United States, to prevent in future a collision of power, such as has for thirty years past, partially disturbed the harmony, which ought to subsist between the general government and its component parts.

Permit me to join the legislature in their wish, that the same may be laid before the legislature of Virginia, for their concurrence and adoption. I have the honor to be, with great respect, your obedient servant,

SIMON SNYDER.

His excellency the governor
of the state of Virginia.

NOTE—The foregoing letter is a copy sent to each state, composing the union.

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Lancaster, April 11*th*, 1809.

SIR—I am instructed by the governor to authorise you, inasmuch as it is impossible for him at this distance from you, to

give directions how you are to proceed in every case that may arise, and which may require dispatch, *to do in all cases generally*, as in your judgment ought to be done to protect the just rights of the state, and from time to time acquaint him of your proceedings.

It has been stated to the governor, that the marshal had gotten into the house of Mrs. Sergeant. It is submitted to you to enquire, in what manner he got in; whether the door was open or shut; whether he lifted the latch, or turned, or forced the bolt of the door; in fine, whether his proceedings in the case have not been such, as to make him liable for a misdemeanor. I have only to add, that the governor confides in your talents and vigilance in protecting and defending the just rights of the state, to the utmost of your power.

I have the honor to be, sir, your obedient servant,

N. B, BOILEAU, secretary.

Walter Franklin, Esq.

Washington, April 15th, 1809.

Sir—I have received your letter of the 6th instant, accompanied by certain acts of the legislature of Pennsylvania, which will be laid before congress, according to the desire expressed.

Considering our respective relations, to the subject of these communications, it would be unnecessary, if not improper, to enter into any examination of some of the questions connected with it. It is sufficient, in the actual posture of the case, to remark, that the executive of the United States, is not only unauthorised to prevent the execution of a decree sanctioned by the supreme court of the United States, but is expressly enjoined by statute, to carry into effect any such decree, where opposition may be made to it. It is a propitious circumstance, therefore, that whilst no legal discretion lies with the executive of the United States to decline steps, which might lead to a very painful issue, a provision has been made by the legislative act, transmitted by you, adequate to a removal of the existing difficulty. And I feel great pleasure in assuring myself, that the authority which it gives, will be exercised in a spirit corresponding with the patriotic character of the state over which you preside.

Be pleased, sir, to accept assurances of my respectful consideration,

JAMES MADISON.

His excellency governor Snyder.

Philadelphia, April 13th, 1809.

Dear sir—You no doubt have heard the turn which our affairs have taken. Myself and the guard who opposed the mar-

shall, were arrested on Friday last, and compelled to give security for our appearance on Tuesday, when the court met: Mr. Dallas informed me, we might withdraw until called for; since which the grand jury have found bills against us, and we are to stand trial on Monday next. From the complexion of the jury summoned, we have little to expect: as for myself, the event I disregard; but the poor fellows implicated with me, I feel for, they being poor, and have families to provide for. The grand jury finding bills against us, has damped the spirits of the militia of this district, owing to their being liable to prosecution.

I am fearful we shall not be able to continue our guard after this week, as the marshal has issued his summons to the citizens to meet him on Tuesday next at 10 o'clock, for the purpose of assisting him to subdue the armed force, which has opposed him in the duty of his office. The mode he has adopted is much against us, as he has been particularly careful to serve the notices on the very persons on whom we have to place our whole dependence. His notices already served amount to four thousand, how many of which will obey, I cannot tell, but his measures are well thought of by some. It will be necessary to appoint a paymaster here, for the purpose of advancing money to some of the troops, who have been on duty, and who may come on; as they say, they cannot do duty and suffer their families to starve; their expenses will be great. I wish the business could be settled, provided it could be done with honor to the state. Mrs. Sergeant and Waters say, that, unless the money is paid in a day or two, they are determined to go to Lancaster, and there wait the event; which would be very disagreeable to you.

Accept, sir, of my best wishes for yourself and family, and believe me sincerely, your obedient humble servant,

MICHAEL BRIGHT.

Simon Snyder, Esq.
Governor of Pennsylvania.

P. S. I have just received a note from general Steele, stating that the legion are tired of service, and insist that the general militia ought to take their part of duty. It will be difficult to get force from the general militia. I wish you would write general Steele and major Rush on the subject, requesting them to inspire the men.

EVENING REPORT.

Head quarters, April 14th, 1809.

Between the hours of eight and nine o'clock, a riot took place in the front of the house of Mrs. Sergeant; on account of which the commanding officer of the detachment of men (militia) who were then on guard, and finding that there were not suffi-

cient for to silence the riot, ordered out the rest, who were in the barracks, for to proceed and assist in quelling the riot; after which the detachment was divided into two divisions—the first under the command of myself, the second under the command of lieutenant Bartling; the first stationed in Arch, the second in Seventh streets.

NOTE—Mr. Seargeant came to the house of Mrs. Seargeant, I being present. He came up to me and informed me that some persons were in the yard, immediately after which I ordered a file of men, in order to search the yard. On entering the yard, I met Mrs. Sergeant, and observed a lady standing in a door which has communication to the yard. The expression she made use of was, that "she wished that the marshal would take me and the whole of the guards, and put us in jail." Disregarding her language, I immediately placed two centinels in the yard—a short time after which, a Mr. Sergeant came and requested that I would withdraw the centinels, pledging at the same time, his honor, that he would keep close doors, and let no one in; on account of which, I withdrew the centinels.

CARL W. WESTPHAL,
Adjutant, 25th regiment Pennsylvania militia.

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MORNING REPORT.

Head quarters, April 15th, 1809.

From the time the revillee was beat, twenty minutes past four, nothing of consequence occurred; about half past six information was received by Mr. Sergeant, that the marshal of the United States, and for the district of Pennsylvania, had entered the house of Mrs. Sergeant, by a communication from Cherry alley.

CARL WESTPHALL,
Adjutant, 25th regiment Pennsylvania militia.

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Philadelphia, April 15th, 1809.

SIR—I have the honor to inform you, that after several ineffectual attempts, the marshal of the district of Pennsylvania at length succeeded this morning in gaining admittance into the house of Mrs. Sergeant, and arresting her, under the process issued from the district court at the suit of Gideon Olmstead and others. Mrs. Sergeant is in consequence of this arrest, now in the custody of the marshal.

I take the earliest opportunity of apprising your excellency of this occurrence, that you may take such measures, as may seem adviseable and just for the interest of the state, and the relief of the individuals.

With great respect, I have the honor to be, your excellency's humble servant,

JOHN SERGEANT.

The governor of Pennsylvania.

Philadelphia, April 15, 1809.

DEAR SIR—Be pleased to inform the governor, that in consequence of the arrest of Mrs. Sergeant, an application has been made for a habeas corpus, which we expect will be returnable on Monday morning at 9 o'clock, before the chief justice. You may rely on my best exertions to obtain a favorable result.

I am decidedly of opinion, that the occurrence will justify the governor in ordering the guard to be withdrawn, and in case of an unfavorable decision, in paying the money. The order for calling out the posse is withdrawn. Yours respectfully, in haste,

W. FRANKLIN.

N. B. Boileau, Esq.

HEAD QUARTERS,

Lancaster, April 16, 1809.

SIR—Having been authentically informed, that the marshal of the district of Pennsylvania has found means to serve the process, awarded by the district court, upon Mrs. Sergeant, one of the executrices of David Rittenhouse, formerly state treasurer of the commonwealth: I therefore direct you, to withdraw the guard, heretofore ordered by me for the protection of the persons and property of the said executrices—and that you furnish your muster and pay-rolls as soon as possible for adjustment.

SIMON SNYDER,

Governor of the commonwealth of Pennsylvania.

To general M. Bright.

Secretary's office, April 17, 1809.

SIR—The marshal having arrested Mrs. Sergeant, I am directed by the governor to instruct you, that in case you fail in liberating the executrices by habeas corpus, which you have been directed to apply for to the chief justice of the commonwealth, that you are authorised by him to give such assurances as may be required, that as soon as the demand against the executrices of David Rittenhouse, late state treasurer, deceased, is legally ascertained, that he will discharge the same.

N. B. BOILEAU, secretary.

Walter Franklin, Esq.

Lancaster, April 23, 1809.

SIR—That one of the marshal's officers should be continued in the house of Mrs. Sergeant, for the safe-keeping of her person, after the assurance given by the secretary of the commonwealth that the money should be paid, so soon as the amount decreed to be due to Gideon Olmstead was ascertained, is matter of surprise and deep regret to me. I would ask, is it fair to doubt my candor on a point involving the honor of the state?

No specific directions relative to the duties *imposed* on me by the act of April 4th, 1809, being given for my guide—the account must therefore be settled in the usual manner by the accountant officers, before a warrant can issue for the money—this requires some time, and the unexpected absence of the comptroller-general (of which I am just informed), may cause an additional delay. Mr. Findlay is also absent, but he returns on Wednesday. If no unforeseen difficulty arises, the business can be concluded before the end of the week. Anxious to bring this unpleasant business to a close, I shall, as soon as the warrant is made out, send it by a trusty person to Philadelphia, to be endorsed by Mrs Sergeant and Mrs. Waters, as a voucher for the treasurer, and on delivering up the bond given by my predecessor, with a full acquittance thereon, signed by the ladies, as a voucher for me, the money will be paid. In the mean time, I hope the restraint on Mrs. Sergeant will be removed. I think this mode preferable to asking the ladies to send a duly authorised agent to this place, which has been suggested; it will save them trouble and expedite the business.

If any difficulty should arise with the accountant officers respecting the commissions charged in the bill of costs, which I cannot perfectly understand, I hope that may not prove an obstacle to relieving the ladies. It is not ascertained that there will be any difficulty about that item, for I have not seen them.

SIMON SNYDER.

W. Franklin.

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Lancaster, 24th April, 1809.

DEAR SIR—The account you sent me, not being legally authenticated, and no copy of the judgment rendered, in the case of Olmstead being furnished, formed an objection on the part of the accounting officers to passing the account in the usual manner.

To procure authentic vouchers would cause delay, and protract the release of Mrs. Sergeant from unmerited personal suffering. To remove all pretext for its longer continuance, I have drawn an order for $14,378 75—that being the amount of principal and interest adjudged to be due Olmstead, including $213 75, for costs and commissions.

Mr. M'Elwee, whom I send for the purpose, takes with him the warrant, and will see that it is endorsed by the ladies; he takes with him also the treasurer's check for the money. On the subject of the bond of indemnity, I have written to you by last mail. You will see the necessity of that instruments being delivered up, with a full acquittance endorsed thereon, signed by the ladies, before the money is paid. You will also perceive the necessity of a copy of the decree favoring Olmstead, and an account of the sum due, and bill of costs being forwarded, all duly authenticated. These vouchers are absolutely necessary.

Sincerely yours, &c.

SIMON SNYDER.

Walter Franklin, Esq. attorney-general.

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Philadelphia, 26th April, 1809.

Dear sir—I received your excellency's favor of the 24th by Mr. M'Elwee, yesterday afternoon, and in a few minutes after the postman presented me that of the 23d inst.

I felt much mortified that the marshal should continue an officer in the house of Mrs. Sergeant, after the assurance which I made to him by your authority, and he then expressed his intention to remove him immediately. But, I believe, he was afterwards deterred from carrying this intention into effect, by the conduct of Lewis. The officer, however, was one of the family of Mrs. Sergeant, specially deputed; she therefore could not sustain much inconvenience from the circumstance.

In obedience to your excellency's directions, I called last evening with M'Elwee on Mrs. Sergeant, for the purpose of making a settlement of this business, but the bond of indemnity not being in the house, the matter was postponed until this morning, when the money was paid, and the bond taken up, with a release properly endorsed, and is now enclosed. I have called on the clerk of the circuit court, for the purpose of obtaining an authenticated copy of the decree, process, &c. He informs that he will make them out as soon as he can; but that it will take two or three days. I hope to have them ready by the time Mr. Boileau arrives, and will send them on by him. I have sent your excellency a pamphlet, containing the proceedings on the habeas corpus, before chief justice Tilghman. It contains as accurate an account of the argument, &c. as could be taken without the assistance of short-hand writing. The trial of general Bright, and his associates, is fixed for Friday next.

With sentiments of the most sincere attachment, I remain your excellency's friend and servant,

W. FRANKLIN.

His excellency Simon Snyder, Esq.

Gideon Olmstead, Artimus White, Aquilla Rumsdale, and David Clarke, versus *Elizabeth Sergeant and Esther Waters, surviving executrices of David Rittenhouse, Esq. deceased.*	In the district court of the United States, in and for the district of Pennsylvania.

"I acknowledge that the libellants have received satisfaction of this decree by payment of the amount and of the costs of court.

RICHARD PETERS, jun.
For the libellants—November 24th, 1809.

N. B. Right to claim costs of summoning the posse by the marshal not waved. RICHARD PETERS, jun."

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United States,
District of Pennsylvania, } sct.

(L. S.) I certify the foregoing to be a true and faithful copy of the entry of satisfaction made upon the record of the decree in the above cause—in testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Philadelphia, this 24th day of November, A. D. 1809, and in the thirty-fourth year of the independence of the said United States.

D. CALDWELL, clk. dist. ct.

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Gideon Olmstead, Artimus White, Aquilla Rumsdale and David Clarke, versus *Elizabeth Sergeant and Esther Waters, surviving executrices of David Rittenhouse, Esq. deceased.*	In the district court of the United States, in and for the district of Pennsylvania.

By virtue of the within writ, I arrested the body of Elizabeth Sergeant, one of the respondents, who paid into my hands the sum of fourteen thousand three hundred and seventy-eight dollars and seventy-five cents debt, interest and costs in this case—which debt and interest, amounting to fourteen thousand one hundred and seventy-five dollars, I have paid over to Gideon Olmstead, for the libellants in this case, and have delivered up to the said respondents the *bond of indemnity* referred to in this writ. So answers, JOHN SMITH, marshal.

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United States,
District of Pennsylvania. } sct.

(L. S.) I certify the foregoing to be a true and faithful copy of the return made by the marshal, to the writ of arrest issued in the above cause. In testimony

whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this twenty-fourth day of November, A. D. 1809, and in the thirty-fourth year of the independence of the said United States.

D. CALDWELL, clk. dist. ct.

WEDNESDAY, JANUARY 24, 1810.

The speaker laid before the Senate a letter from N. B. Boileau, secretary of the commonwealth, enclosing two other letters written by him to general Michael Bright, which were severally read as follows, viz.

Secretary's office, January 23, 1810.

SIR,—In consequence of an error in transcrbing one of the letters among the documents, relative to the case of Olmstead, one of them being dated the 29th of March, which ought to be the 14th of April, and also to explain an allusion in the beginning of Mr. Bright's of the 31st of March, to a private letter of mine, of the 29th of the same month, it becomes proper to enclose, for the information of the Senate, those two original letters which I have procured from Mr. Bright for that purpose, requesting that they may be returned after they shall have been inspected.

Very respectfully, sir, your obedient servant,

N. B. BOILEAU, sec'ry.

P. C. Lane, Esq. speaker of the Senate.

Lancaster, April 14, 1809.

SIR—The governor has directed me to express to you his high approbation of your conduct, and the great satisfaction he feels in the appointment of a man, who has so ably executed the orders he has given, and that he relies with confidence on your future exertions to support the just rights of the state to the utmost of your power, under circumstances so unpleasant and embarrassing. I am further instructed to assure you, and those under your command, that nothing in his power shall be wanting to remunerate you and them, for services rendered, and an ample indemnification for all expenses which may occur. By his order, I enclose you a check for one thousand dollars on account, to defray the expenses of the guards that you have or may employ; further remittances will be made, as occasion may require. The governor conceives, that the orders you have received, are sufficient to justify you in any further measures you may deem expedient to take in order to protect the ladies from

arrest, until he receives an answer to the communication he has made to the president of the U. States, which is hourly expected.

I am, sir, with high esteem, your obedient servant,

N. B. BOILEAU, secretary.

General Michael Bright.

P. S. You will please to send me a receipt, the copy of which I have enclosed.

Lancaster, March, 29, 1809.

DEAR SIR—I have no additional instructions to give you from the governor. But I can assure you that he is highly pleased with your firm and manly conduct in defending the rights of this state : it will cover you with never-fading laurels, while the conduct of those who have raised a clamor and have endeavored to excite the fury of a mob will be covered with merited disgrace. —Attempts have been made here to intimidate the legislature, but to no effect ; I have no idea that the *cool* and *deliberate* determination of the legislature, expressed at various times for nearly *thirty* years to assert the rights of this state and its sovereignty, should be prostrated by an ignorant mob in the city of Philadelphia, urged on by a set of designing men, who wish to disgrace the present administration ; who would, hereafter, laugh at its pusillanimity and want of energy, to resist the *wanton usurpation* of an *ambitious* supreme judge. The legislature have now before them a bill making appropriations, to meet the expenses arising under the orders of the governor ; be assured, and assure the men under your command, that they will be remunerated for their services, and be protected against any suits that may be instituted against them. Nay, I am confident that Dallas dare not attempt what he has threatened. I have no doubt but if the citizens would be quiet the matter would be adjusted to the honor of the state, and no injustice done to any individual ; but if they are mad enough to interfere and sustain personal injury, it will be of their own seeking. I wish to hear from you every mail, and I will write to you when ever any thing occurs worth communicating; any instructions the governor gives to me, I will immediately give you information.

In the mean time, I expect you will persevere, avoiding as much as possible injuring any person. I am certain that when the matter and true ground of the present proceeding is understood, by the people, they will be tranquil and wait the result of the correspondence between the executive of this state and that of the United States.

I am, with high respect and consideration, sir, your obedient servant, N. B. BOILEAU.

Gen. Michael Bright.